TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 394

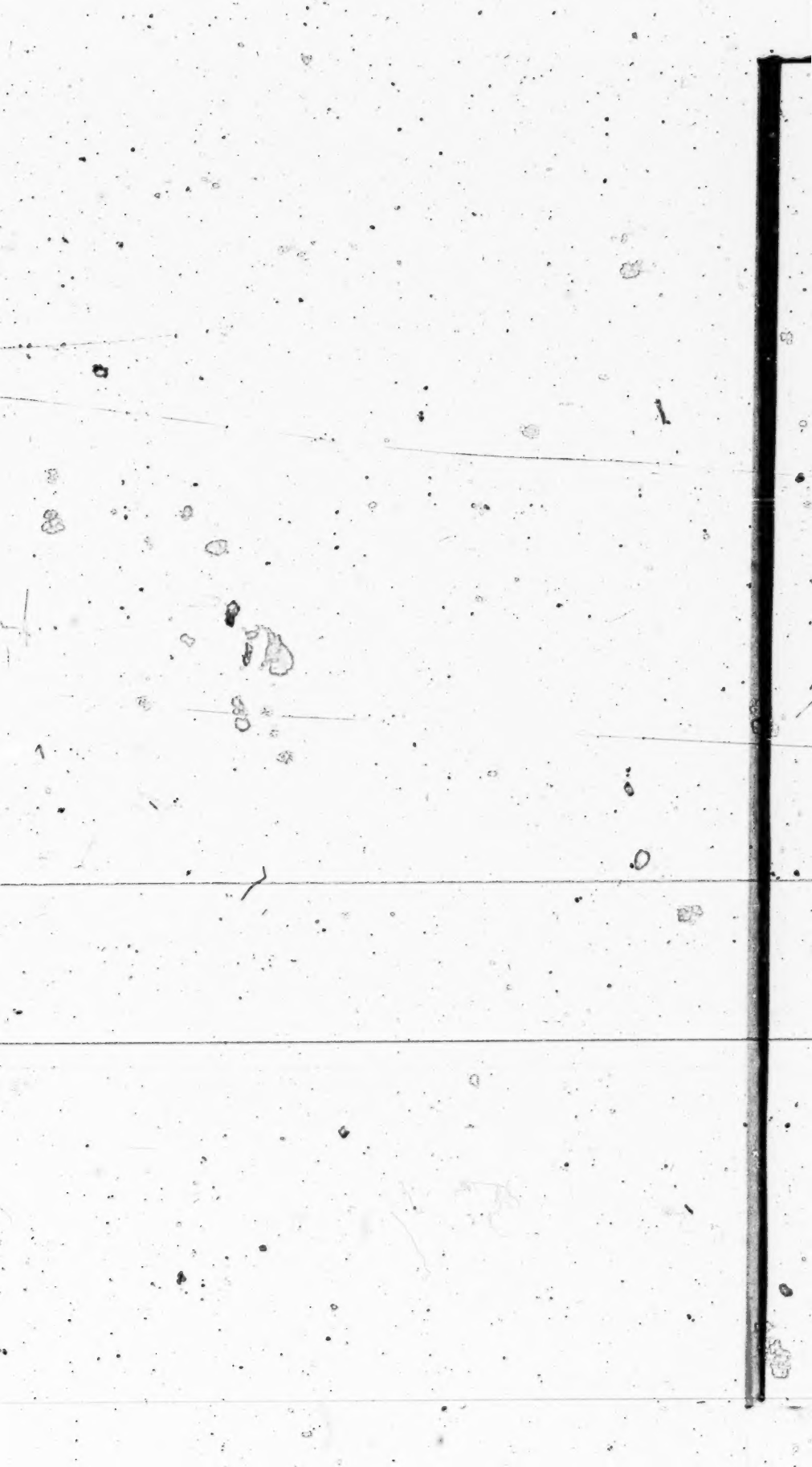
STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON, APPELLANT,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. MICHAEL F. KINKEAD, JUDGE OF SAID COURT OF RAMSEY COUNTY

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED SEPTEMBER 16, 1939



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 11, 1939.

—5051

[fol. 1] **IN SUPREME COURT OF MINNESOTA**

STATE OF MINNESOTA, ex rel., CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA and HON. ALBIN S. PEARSON, Judge of said Probate Court of Ramsey County, Respondents

PETITION FOR WRIT OF PROHIBITION—Filed May 5, 1939

To the Honorable Supreme Court of the State of Minnesota:

The petition of Charles Edwin Pearson of the City of St. Paul, Ramsey County, Minnesota, respectfully alleges:

That on or about the 28th day of April, 1939, an order for hearing on May 5th, 1939, at 2 o'clock P. M., was made and issued by the Probate Court of Ramsey County, Minnesota, a copy of which is hereto attached, marked Exhibit "A", and hereby referred to and made a part hereof. That on said 28th day of April, 1939, a warrant and order for relator's arrest was made and issued by said Probate Court, a copy of which warrant is hereto attached marked Exhibit "B", and made a part hereof. That said order was made upon a petition, a copy of which is hereto attached marked Exhibit "C". That relator is about to be summoned and arrested and imprisoned under said order and warrant by the Sheriff of Ramsey County, Minnesota, forthwith, to appear before said Probate Court pursuant to said warrant and order.

That said warrant and order for hearing were made by said Probate Court under the provisions of a purported statute, Chapter 369, H. F. 1584, Session Laws of the State of Minnesota, 1939, entitled, "An act relating to persons having a psychopathic personality."

[fol. 2] That petitioner is informed and believes and so alleges that said purported statute is unconstitutional and void in that it violates Article VI, Section 7 and Article I, Sections 2, 4, 5, 7, 11 and 27 of the Constitution of the State of Minnesota, and the 13th and 14th Amendments of the Constitution of the United States.

That said Probate Court and said Judge thereof, as petitioner is informed and believes, intends to and will proceed

to conduct a hearing and examine relator pursuant to the provisions of said purported statute, and make findings and render order and judgment therein, unless this Court, by its writ of prohibition, shall otherwise order.

That said statute, as relator is informed and believes, (a) purports to confer jurisdiction on the Probate Court contrary to said Article VI, Section 7, of the Minnesota Constitution; and (b) denies relator, a citizen, the rights and privileges secured to him by the law of the land, and imposes involuntary servitude otherwise than punishment of a crime (Article 1, Section 2); (c) denies the right of trial by jury (Article I, Section 4); denies a public trial by an impartial jury; (d) fails to inform of the nature or cause of the accusation (Article I, Section 6); (e) said act makes no provision for bail, and inflicts cruel and unusual punishment (Article I, Section 5); (f) denies due process of law and violates the constitutional provision that no person shall be held to answer for a criminal offense without due process of law; (g) violates the provision that no person shall be put twice in jeopardy of punishment, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; (h) denies right of persons before conviction to be bailable by sufficient sureties (Article I, Section 7); (i) is an ex post facto law (Article I, Sec. 11); (j) violates [fol. 3] the constitutional provision that no law shall embrace more than one subject which shall be expressed in its title (Article VI, Section 27); (k) violates the provisions against involuntary servitude except as a punishment for crime whereof a party shall have been duly convicted (U. S. Constitution, 13th Amendment); (l) abridges the privileges or immunities of relator, a citizen of the United States, and deprives him of liberty without due process of law and denies to him the equal protection of the laws. (U. S. Constitution, 14th Amendment.)

That this petitioner has no speedy or adequate remedy by appeal or otherwise: That there is no bail provided for under said purported statute. Unless relator have relief herein he will be subjected to expense, to publicity and ignominy and jeopardy of trial. That under said threatened proceedings he will be denied the constitutional privilege against self incrimination. That he will be caused to suffer irreparable injury and immeasurable damage. That re-

lator, a sane man, should not be compelled to submit to proceedings, void ab initio, which may terminate in causing him to be confined in a hospital for the insane. State ex rel. Robert v. Hense, 135 Minn. 99, 160 N. W. 198.

Wherefore your petitioner prays that this court issue its writ of prohibition commanding said Probate Court, and the Judge thereof, to desist from any further proceedings in said action.

Further, that relator have such other and further relief herein as may be proper.

Charles Edwin Pearson, Petitioner. Otis H. Godfrey, Attorney for Petitioner.

[fol. 4] *Duly sworn to by Charles Edwin Pearson. Jurat omitted in printing.*

[fol. 5] EXHIBIT "A" TO PETITION

IN PROBATE COURT

61202

STATE OF MINNESOTA, COUNTY OF RAMSEY

Re: CHARLES EDWIN PEARSON, Psychopathic Personality

ORDER FOR HEARING

A petition for commitment of the above named patient having been filed,

It is Ordered, that such petition be heard before this court in the Court House, at St. Paul, Minnesota, on May 5th, 1939, at 2 o'clock P. M.

Witness, the Hon. Albin S. Pearson, Probate Judge, this 28th day of April, 1939.

F. W. Gosewisch, Clerk. (Court Seal.)

(Service admitted April 28th, 1939. M. F. Kinkead, County Attorney, by Horace Hansen, Asst. County Atty.)

(Filed Apr. 28, 1939. F. W. Gosewisch, Clerk, by G. E. A., Deputy.)

[fol. 5a] EXHIBIT "B" TO PETITION

Order to Sheriff. BC. 2A. Form 462C. 4-27 1M.

IN PROBATE COURT

STATE OF MINNESOTA,
County of Ramsey, ss:

The State of Minnesota to the Sheriff of Said County:

Petition in due form of law having been filed in my office alleging that Charles Edwin Pearson, residing at No. 746 E. Geranium Street, St. Paul, in said County is—psychopathic personality—and in need of care and treatment, you are therefore required forthwith to bring said above named person before the above named Court for examination as to his psychopathic personality according to the statute in such case made and provided.

Witness my hand and official seal this 28th day of April, 1939.

Albin S. Pearson, Judge of Probate. (Seal of Probate Court.)

[fol. 6] EXHIBIT "C" TO PETITION

PROBATE COURT

STATE OF MINNESOTA,
County of Ramsey:

Re: Charles Edwin Pearson, Psychopathic Personality

Petition for Commitment

James A. Cook, a police officer of the City of St. Paul, Minnesota, respectfully represents that Charles Edwin Pearson is a resident and has legal settlement in the City of St. Paul, County of Ramsey and State of Minnesota, residing at 746 E. Geranium Street. That the said Charles Edwin Pearson is married.

That your petitioner believes that said patient is a psychopathic personality as defined by Chapter 369 of the Session Laws of Minnesota, 1939, because of his emotional instability, impulsiveness of behaviour, lack of customary stand-

ards of good judgment, failure to appreciate the consequences of his acts as to render said Charles Edwin Pearson irresponsible for his conduct with respect to his sexual behaviour with several young girls under the age of sixteen years. That the said sexual behaviour of the said Charles Edwin Pearson with young girls is such as to render him dangerous to other persons.

Wherefore, your petitioner prays that said Charles Edwin Pearson be committed according to law.

James A. Cook.

STATE OF MINNESOTA,
County of Ramsey, ss:

James A. Cook, being duly sworn says that he is the petitioner in the above entitled proceedings; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

James A. Cook.

Subscribed and sworn to before me this 27th day of April, 1939. George E. Anderson, Clerk of Probate Court.

[fol. 7] IN PROBATE COURT

STATE OF MINNESOTA,
County of Ramsey:

Re: Charles Edwin Pearson, Psychopathic Personality

Approval of Petition

M. F. Kinkead respectfully represents to the Court that the facts upon which the attached petition are based have been submitted to the office of the County Attorney and the County Attorney is satisfied that good cause exists for the institution of this proceeding.

M. F. Kinkead, County Attorney of Ramsey County.

April 27, 1939.

[fol. 8] IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER ALLOWING WRIT OF PROHIBITION—Filed May 5, 1939

Upon reading and filing the foregoing verified petition of Charles Edwin Pearson and on motion of Otis H. Godfrey, attorney for the petitioner, let an alternative writ of prohibition issue out of and under seal of this court, as prayed for, returnable on May 15, 1939, at 9:30 o'clock A. M., and let a copy of said petition be served with such writ.

Dated May 5th, 1939.

Henry M. Gallagher, Chief Justice of Supreme Court.

[fol. 8½] [File endorsement omitted.]

IN SUPREME COURT OF MINNESOTA

[fols. 9-10] 32163

[Title omitted]

ALTERNATIVE WRIT OF PROHIBITION—Filed May 8, 1939

The State of Minnesota to the Probate Court of Ramsey County, Minnesota, and to Hon. Albin S. Pearson, Judge Thereof.

Greetings: Whereas it has been made to appear to our Supreme Court by the verified petition of Charles Edwin Pearson:

(Here follows petition which is omitted in printing as it appears at page 1 of record)

[fol. 11] Nevertheless you the said Probate Court of Ramsey County, Minnesota, and Honorable Albin S. Pearson, Judge thereof, as it is alleged, have proceeded in said action and have caused a warrant to be issued for the arrest of said Charles Edwin Pearson and are about to conduct a hearing and examine him and make findings and render order and judgment therein under Chapter 369, H. F. No. 1584, Session Laws of Minnesota, 1939, entitled, "An Act relating to persons having a psychopathic personality," against the

laws and customs of our state and to the manifest injury and damage to said Charles Edwin Pearson.

We, therefore, being willing that the laws and customs of our said state should be observed, and that our good and faithful citizens should in no wise be oppressed, do com- [fol. 12] mand you, the said court and judge thereof, that you desist and refrain from any further proceedings in the said action and proceeding specified in said relation and herein, until the further order of this court thereon; and that on the 15 day of May, 1939, at 9:30 o'clock A. M., you show cause before our said court why you should not be absolutely restrained from any further proceedings in said action. And have you then and there this writ.

Witness, the Hon. Henry M. Gallagher, Chief Justice of the Supreme Court of the State of Minnesota, this 5th day of May, 1939.

Grace Kaercher Davis, Clerk of Supreme Court. (Seal.)

[fol. 13] Exhibit "A" to writ omitted. Printed side page. 5 ante.

[fol. 13½] Exhibit "B" to writ omitted. Printed side page. 5a ante.

[fols. 14-15] Exhibit "C" to writ omitted. Printed side page. 6 ante.

[fol. 16] STATE OF MINNESOTA,
County of Ramsey, ss:

Otis H. Godfrey being first sworn deposes and says that at the City of St. Paul, County of Ramsey, State of Minnesota, on the 5th day of May, 1939, he served the within Alternative Writ of Prohibition upon Albin S. Pearson, Judge of Probate Court of Ramsey County, Minnesota, and upon the Probate Court of Ramsey County, Minnesota, personally, by handing to and leaving with said Albin S. Pearson, Probate Judge, a true and correct copy, for said Judge, and a true and correct copy, for said Probate Court.

Otis H. Godfrey.

Subscribed and sworn to before me this 5th day of May, 1939. Francis X. Buchmeier, Notary Public, Ramsey County, Minnesota. (Seal.)

My commission expires Nov. 20, 1945.

[fol. 16½] [File endorsement omitted.]

IN SUPREME COURT OF MINNESOTA

[fol. 17] 32163

[Title omitted]

RETURN TO WRIT—Filed May 17, 1939

To the Supreme Court of Minnesota:

Pursuant to the Writ of Prohibition herein, I, Albin S. Pearson, Probate Judge of Ramsey County, Minnesota, hereby certify that attached hereto is a true transcript of all documents on file herein, except the copies of the Petition for Writ of Prohibition, Order for issuance of said writ, and the Alternative Writ served upon me and filed herein on May 5, 1939; and that the amount of $1.50 clerk's fee for this return was paid on May 12, 1939.

Albin S. Pearson, Probate Judge.

Dated May 12, 1939. (Court Seal.)

[File endorsement omitted.]

[fol. 18] Approval of Petition omitted. Printed side page. 7 ante.

[fols. 19-20] Petition for Commitment omitted. Printed side page. 6 ante.

[fol. 21] Order for Hearing omitted. Printed side page. 5 ante.

[fol. 22] Warrant omitted. Printed side page. 5-a ante.

[fol. 23] IN SUPREME COURT OF MINNESOTA

[Title omitted]

RETURN TO WRIT—Filed May 17, 1939

I, Albin S. Pearson, Judge of the Probate Court in and for Ramsey County, State of Minnesota, the respondent above named, do hereby respectfully make this answer and return to the petition of Charles Edwin Pearson, relator,

praying for a writ of prohibition to issue out of this court in the above entitled cause, as follows:

I

That Exhibits "A" and "B" attached to the aforesaid relator's petition and alternative writ of prohibition appear to be true and correct copies of the order for hearing and order to the sheriff of Ramsey County, Minnesota.

II

That Exhibit "C" and Exhibit "C", page 2, attached to said petition and alternative writ of prohibition appear to be true and correct copies of the petition for commitment and approval of said petition by the county attorney of Ramsey County, Minnesota.

[fol. 24]

III

Respondent further respectfully shows to the court as follows:

a) That on the 27th day of April, 1939, one James A. Cook, a police officer of the City of St. Paul, swore to an affidavit, of which relator's exhibit is a copy, before George E. Anderson, Deputy Clerk of Probate Court, City of St. Paul, Ramsey County, Minnesota, in which affidavit affiant deposed and stated that the relator Charles Edwin Pearson was a resident and had a legal settlement in the city of St. Paul, County of Ramsey, Minnesota, and that said Pearson had a psychopathic personality as defined by Chapter 369 of the Session Laws of 1939, and that his behavior with young girls rendered him dangerous to other persons.

b) That relator's Exhibit "C", page 2, was the approval of said petition by M. F. Kinkead, the County Attorney at Ramsey County, Minnesota, in which he represented to the court that the facts upon which the attached petition was based had been submitted to his office and he was satisfied good cause existed for the institution of proceedings to declare relator a psychopathic personality; that said petition and approval of the County Attorney were filed with the clerk of probate court of Ramsey County, Minnesota, on April 28, 1939.

c) That your respondent as Judge of Probate Court of Ramsey County, Minnesota, pursuant to the filing of said petition and approval issued an order to the sheriff of Ram-

sey County, of which Exhibit "B" is a correct copy, requiring him to bring the relator before the court for examina-[fol. 25] tion as to his psychopathic personality in accordance with the statute in such case made and provided, and made an order of which Exhibit "A" is copy requiring said pefition to be heard on May 5, 1939, at 2:00 o'clock P. M. for the purpose of determining whether said relator had a psychopathic personality and was in need of care and treatment.

IV

Respondent further respectfully shows to the court as follows: Upon the foregoing facts I concluded that it was within my power and jurisdiction as Judge of said Probate Court to hear and determine the question of fact and law involved in said proceeding to determine whether said relator was a person having a psychopathic personality as provided in Chapter 369, Laws of 1939, and that in conscience and law it was my duty to decide that the service of process upon the relator was valid and that the said Probate Court obtain jurisdiction over the person of relator in said proceedings.

Respectfully submitted, Albin S. Pearson, Judge Probate Court. (Court Seal.)

Duly sworn to by Albin S. Pearson. Jurat omitted in printing.

[fol. 26] State of Minnesota,
County of Ramsey; ss:

The foregoing Return is hereby adopted by Albin S. Pearson, Judge of the Probate Court of the County of Ramsey, Minnesota, respondent named in the Order to Show Cause and Alternative Writ of Prohibition, and will be relied upon as sufficient cause why said Writ should not be made absolute and that the restraining order be discharged and respondent proceed with the hearing of said cause.

J. A. A. Burnquist, Attorney General, By John A. Weeks, Assistant Attorney General, Attorneys for Respondents, 102 State Capitol, St. Paul, Minnesota.

[File endorsement omitted.]

Service of the within return is hereby admitted at St. Paul, Minn. this 17th day of May, 1939.

Otis H. Godfrey, Attorney for Relator.

[fol. 27] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PETITION FOR APPEAL—Filed Sept. 6, 1939

Considering himself aggrieved by the final decision and judgment of the Supreme Court of the State of Minnesota in the above entitled cause, the relator Charles Edwin Pearson, appellant herein, hereby prays for the allowance of an appeal to the Supreme Court of the United States from the final judgment herein, and for an order fixing the amount of the bond thereon.

The opinion of the Supreme Court of Minnesota herein was filed June 30, 1939; the order denying appellant's petition for re-argument was filed August 31st, 1939, and final judgment was entered August 31st, 1939.

Appellant represents and states that in the above entitled cause he raised and presented the issue that Chapter 369, Session Laws of Minnesota for 1939, was invalid and void upon the ground that it was repugnant to all of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States. That the validity of said statute of the State of Minnesota was thereby drawn in question.

[fol. 28] That in and by its decision and final judgment herein as above set forth the Supreme Court of Minnesota necessarily decided in favor of the validity of said Chapter 369, Laws of 1939, and denied the claim of appellant that said statute was repugnant to the Constitution of the United States.

That on the facts as above stated, appellant, under the terms and provisions of Section 237 of the U. S. Judicial Code as amended, (U. S. C. A. Title 28, Section 344) is given a direct right of appeal to the Supreme Court of the United States.

Wherefore, appellant and relator prays for an order granting his appeal to the Supreme Court of the United

States and fixing the terms and provisions of the bond to be furnished by him on such appeal.

Dated September 6th, 1939.

Charles Edwin Pearson, by Joseph F. Cowern, His Attorney.

[File endorsement omitted.]

[fol. 29] IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER ALLOWING APPEAL—Filed Sept. 6, 1939

The petition of Charles Edwin Pearson for the allowance of an appeal to the Supreme Court of the United States from the final judgment entered in the above entitled cause on August 31st, 1939, came on to be heard, accompanied by the assignment of errors, prayer for reversal, and the typewritten jurisdictional statement required by Rule 12 of the Rules of the Supreme Court of the United States, all in due form, and it appearing that the petitioner, Charles Edwin Pearson, has, in the above proceeding, attacked Chapter 369, Laws of 1939, as invalid because repugnant to the Constitution of the United States, and particularly Section 1 of the Fourteenth Amendment thereof, and that by its decision and judgment herein this court necessarily decided that said Chapter 369 did not violate any rights guaranteed to petitioner by the Constitution of the United States, and it appearing that under such circumstances and pursuant to Section 237 of the Judicial Code, as amended, (U. S. C. A. Title 28, section 344) the petitioner has a right of appeal to the Supreme Court of the United States, and the court, upon hearing Joseph F. Cowern, attorney for petitioner in support of said petition, and having duly considered said matter;

[fol. 30] It is hereby ordered that an appeal to the Supreme Court of the United States by said Charles Edwin Pearson, petitioner, is hereby allowed, upon the filing of a bond in the form presented to this court in the sum of $500.00 conditioned that petitioner will answer all costs that may be adjudged to the Probate Court of Ramsey

County, Minnesota, and Hon. Albin S. Pearson, judge of said Probate Court.

And the Clerk of this court is hereby ordered to transmit under her hand and the seal of this court to the Supreme Court of the United States a copy of this order and of all proceedings had and documents necessary for a complete transcript so that the same shall be received by the clerk of the Supreme Court of the United States within thirty days from the date of this order.

Dated September 6th, 1939.

Henry M. Gallagher, Chief Justice of the Supreme Court of Minnesota.

[File endorsement omitted.]

[fol. 31] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 6, 1939

Charles Edwin Pearson, the above named relator and appellant, assigns the following errors in the record and proceedings in the above cause:

(1) The Supreme Court of Minnesota erred in holding that Chapter 369, Laws of 1939, was not repugnant to the Constitution of the United States, and in holding and deciding that it was not too vague, indefinite and uncertain to constitute due process of law within the meaning of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and erred in refusing to hold and decide that said Chapter 369 was too vague, indefinite and uncertain to constitute valid legislation under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(2) The Supreme Court of Minnesota erred in holding that said Chapter 369, Laws of 1939, did not deny appellant the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that

said Chapter 369 violated the Fourteenth Amendment to the Constitution of the United States in that it is not made applicable to all of the class treated of, but on the contrary exempts many of said class from its provisions.

[fol. 32] (3) The Supreme Court of Minnesota erred in holding that said Chapter 369, Laws of 1939, did not deny to appellant the due process of law that is guaranteed to him by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that said Chapter 369 contained no provisions, safeguarding and protecting human rights and securing to appellant and others rights and liberties guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that said Chapter 369 was so arbitrary, unfair and wanting in reason as to violate established principles of private right and distributé justice that the Constitution of the United States, and particularly Section 1 of the Fourteenth Amendment thereof, was designed to secure to all.

(4) That said Chapter 369, Laws of 1939, is in its essence criminal legislation and is void because denying appellant a trial by jury in violation of the Constitution of Minnesota and of the due process of law clause of Section 1 of the Fourteenth Amendment, to the Constitution of the United States, and the Supreme Court of Minnesota erred in holding said Chapter 369 valid as against the objection that it unlawfully denies appellant a trial by jury.

(5) That said Chapter 369, Laws of 1939, is so arbitrary, unusual and cruel in its provisions, and so lacking in any provision for the protection of human rights and liberties as to offend the good sense of mankind and all the principles of right and justice and is void because repugnant to the due process of law guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the Supreme Court of Minnesota erred in holding that it was not repugnant to the Fourteenth Amendment, and in refusing to hold that it was void because repugnant to the Fourteenth Amendment for the reasons here stated.

[fols. 33-53] (6) The Supreme Court of Minnesota erred in holding and deciding that Chapter 369, Laws of 1939, did not abridge the privileges and immunities of citizens or of

this appellant, as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the appellant herein prays that the said final judgment and decision of the Supreme Court of the State of Minnesota, dated August 31st, 1939, in this cause, be reversed and judgment rendered in favor of said appellant, and for costs. Dated September 6th, 1939.

Charles Edwin Pearson, Appellant, by Joseph F. Cowern, His Attorney.

[fols. 54-56] Citation in usual form showing service on John A. Weeks filed Sept. 6, 1939 omitted in printing.

[fol. 57] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

CERTIFICATE OF CHIEF JUSTICE—Filed September 6, 1939

It is hereby certified that both in his brief and in the oral argument in the above cause, as well as in his original petition, the appellant, Charles Edwin Pearson, urged that Chapter 369, Laws of 1939, was void because it was repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it denied appellant due process of law and the equal protection of the laws and abridged the privileges and immunities of citizens of the United States, and those questions were necessarily decided against appellant when the act was held valid.

This certificate is made, not for the purpose of attempting to confer jurisdiction on the Supreme Court of the United States, but for the purpose of making it clear that the above claims made by appellant in his original petition were not later waived or withdrawn by him, and because the opinion in the case deals almost entirely with state questions.

Dated September 6th, 1939.

Henry M. Gallagher, Chief Justice, Supreme Court of Minnesota.

ORDER

On motion of counsel for appellant, it is hereby ordered that the above certificate be and it is hereby made a part of the record of the above cause.

Henry M. Gallagher, Chief Justice, Supreme Court of Minnesota.

[fols. 58-60] Bond on appeal for $500.00 approved and filed Sept. 6, 1939 omitted in printing.

[fol. 61] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA, RAMSEY COUNTY

No. 53

Gallagher, C. J.

32163

STATE OF MINNESOTA ex rel., CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY and HON. A. S. PEARSON, Judge, Respondents

SYLLABUS

1. Chapter 369, L. 1939, which subjects persons who are irresponsible for their conduct in sexual matters and thereby dangerous to others to the jurisdiction of the probate court is not violative of constitutional limitations on the jurisdiction of that court.

2. An act entitled "A Bill for an Act Relating to Persons Having a Psychopathic Personality," and providing for the care and commitment of sexually irresponsible persons dangerous to others does not violate Art. 4, § 27, of the state constitution which provides: "No law shall embrace more than one subject, which shall be expressed in its title."

3. Held, (a) The provisions of c. 369, L. 1939, are not so indefinite and uncertain as to render the statute void.

(b) While due process of law requires notice and opportunity to be heard, the constitutional right to a jury trial does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others.

Writ quashed.

[fol. 62] OPINION—Filed June 30, 1939

GALLAGHER, Chief Justice:

On April 27, 1939, James A. Cook, a police officer of the city of St. Paul, filed in the probate court of Ramsey county a petition verified on information and belief, charging one Charles Edwin Pearson with being a psychopathic personality as defined by c. 369, Session Laws of Minnesota, 1939, and praying for his commitment according to law. On certification by the county attorney of his satisfaction that good cause existed for the institution of the proceedings, the probate court issued an order requiring the sheriff of Ramsey county to forthwith bring the said Pearson before the court and another order fixing a hearing on the petition for May 5, 1939, at two o'clock P. M.

Before the service of these orders, relator applied to this court for a writ of prohibition and on his verified petition attacking the constitutionality of the act under which the proceedings were instituted we issued a temporary writ prohibiting the probate court from proceeding with the hearing until the further order of this court. The matter is now here on relator's application to make the writ permanent.

Because of a recognized need for legislation to deal with sex offenders and a belief, shared in by medical authorities and others, that sex crimes are committed because of a weakness of the will as well as of the intellect, the 1939 legislature enacted c. 369 entitled: "A Bill for an Act Relating to Persons Having a Psychopathic Personality." Section 1 of the act reads:

"The term 'psychopathic personality' as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of

customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

[fol. 63] Section 2, in part, reads:

"Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively."

The act also provides that the facts be submitted to the county attorney and his approval be procured before a petition be filed with the probate court; that the probate judge may at his discretion exclude the public from the hearing; that the patient may be represented by counsel and if the court determines that the patient is financially unable to obtain counsel, it is empowered but is not required to appoint counsel for him; and that the patient shall be entitled to have subpoenas issued to compel the attendance of witnesses. From a finding that a "patient" is a "psychopathic personality", he may appeal to the district court upon compliance with the provisions of 3 Mason Minn. St. 1938 Supp. §§ 8992-166, 8992-167, 8992-169 and 8992-170.

Section 3 of the act reads:

"The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure."

Relator challenges the constitutionality of c. 369, L. 1939, on three grounds. He contends: (1) That it violates Article 6, § 7, of the constitution of Minnesota defining and limiting the jurisdiction of probate courts; (2) that it violates Article 4, § 27, of the constitution of Minnesota, which reads: "No

law shall embrace more than one subject, which shall be expressed in its title" and (3) that it is void because it is uncertain and indefinite and violates the Fourteenth Amendment to the Constitution of the United States and other constitutional provisions.

[fol. 64] 1. We deal first with the question of the power of the legislature under our constitution to confer upon the probate court jurisdiction over persons having what is termed a "psychopathic personality."

Article 6, § 1 of the Minnesota constitution reads: "The judicial power of the state shall be vested in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the legislature may from time to time establish by a two-thirds vote."

Section 7 of the same Article, in part, reads: "A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this Constitution."

It will be noted that the constitution specifically limits the jurisdiction of the probate court to "estates of deceased persons and persons under guardianship." If persons having "psychopathic personalities" are to be included among those over whom the probate court has jurisdiction, it must be because they are persons subject to guardianship. The constitution does not specifically state what class of persons are subject to guardianship but leaves the regulation of that question to the legislature. It was so decided in State v. Wilcox, 24 Minn. 143, 148 where the court said: "The manner in which jurisdiction conferred by the constitution on any court or officer shall be exercised when not prescribed by the constitution itself, or the power to regulate it vested elsewhere, may be regulated by the legislature." It was there held that the putting under guardianship of all persons who are proper subjects for it—insane persons, incorrigible drunkards, idiots, spendthrifts, as well as minors—comes within the jurisdiction of the probate court.

While this court in State v. Wilcox, supra, referred only to insane persons, incorrigible drunkards, idiots, spendthrifts and minors as included in the class subject to guardianship within the jurisdiction of the probate court we [fol. 65] do not think it was intended for all time to limit the classification to those named or to deprive the probate

court of jurisdiction over other types of "unnaturals" such as the class involved herein.

Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393, held constitutional c. 288, L. 1907, creating and establishing a hospital farm for inebriates, and authorizing the state board of control to purchase lands therefor and to provide means for the building and maintenance of such institution. This case recognized the jurisdiction of the probate court over persons defined by the act as "inebriates" and approved the procedure prescribed for hearing and commitment.

The constitutionality of c. 397, L. 1917, known as "The Juvenile Court Act" was determined in Peterson v. McAuliffe, 151 Minn. 467, 187 N. W. 226. That act placed jurisdiction over juvenile offenders in the district court in counties having more than 33,000 inhabitants and in the probate court in counties having not more than 33,000 inhabitants.

Chapter 369, L. 1939, §1, defines the term "psychopathic personality" to mean "the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons." The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, defines "psychopathic" as "pertaining to mental disease." It naturally follows that a "psychopathic personality" is one characterized by a mental disorder. It is well recognized that there are many types and degrees of mental disorders. An article appearing in volume 2, March-April, 1939, Number 3 Edition of "The American Journal of Medical Jurisprudence" on "Mental Abnormality in Relation to Crime," pp. 161, 163 refers to "psychopathic personalities" thus:

[fol. 66] "These are individuals who show a lifelong and constitutional tendency not to conform to the customs of the group. They habitually misbehave. They have no sense of responsibility to their fellow-men or to society as a whole. Due to their inherent inability to follow any one occupation, they succumb readily to the temptation of getting easy money through a life of crime. There is usually

a history of delinquency in early life. These individuals fail to learn by experience. They are inadequate, incompatible, and inefficient. This class is sometimes designated as 'Constitutional Psychopathic Inferiority.' Before making this diagnosis, every other diagnostic possibility must be considered and excluded. In this group we see pathological lying, prostitution, vagrancy, illegitimacy, alcoholism and drug addiction. The term 'moral deficiency' is sometimes used to characterize this group. These patients may have psychotic episodes superimposed upon the trends just mentioned. Many of these individuals come into contact with the courts on account of threats, assaults, quarrels and vagrancy."

It is to be noted that the definition given above includes not only the sexually irresponsible but also others of immoral tendencies. The fact that the legislature has chosen to limit the class to the former does not make the act more or less objectionable from a jurisdictional standpoint. Whether the limitation constitutes a basis for objection on the ground that the title fails to express the subject of the act will be later considered.

While the abnormalities of the group placed under the jurisdiction of the probate court by this act differ in form from those which characterize inebriates, idiots and insane persons, the need for observation and supervision is the same and the considerations which led this court in State v. Wilcox, supra, to recognize the latter as being proper subjects for guardianship apply with equal force to the former. In the interest of humanity and for the protection of the public, persons so afflicted should be given treatment and confined for that purpose rather than for the purpose of punishment. This we believe to be true even though their mental deficiencies might not be such as to require absolving them from the effects of the criminal statutes. We find no difficulty in holding that the legislature may give to the probate court jurisdiction over such personalities.

[fol. 67] 2. It is urged by relator that c. 369, L. 1939, is void because in violation of Article 4, §27, of the constitution of Minnesota, which reads: "No law shall embrace more than one subject, which shall be expressed in its title." Cases of two kinds arise under this and similar constitutional provisions: (1) Those in which it is claimed that the

title is so general in its terms that it does not fairly express the subject of the act, and (2) those in which it is claimed that the subject as expressed in the title excludes, by implication, certain provisions of the act. The instant case is of the first type.

The objects of the constitutional provision have been often expressed in the decisions of this court. They are, first, to prevent "log-rolling legislation", or "omnibus bills", by which a large number of different and disconnected subjects are united in bill and then carried through by a combination of interests; and, secondly, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the proposed legislation, or of the interest affected. 6 Dunnell, Minn. Dig. (2 ed. & 1932 Supp.), §8906 and cases cited.

While the provision of the constitution is mandatory, it is to be given a liberal and not a strict construction. Johnson v. Harrison, 47 Minn. 575, 50 N. W. 923. The rules to be applied to its construction and the tests to determine whether the law is repugnant to it are expressed by Mr. Justice Mitchell in Johnson v. Harrison, supra, in language so clear that it warrants adoption. "The term 'subject', as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. * * * All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to [fol. 68] each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject. The large number of related or cognate matters often treated of under some comprehensive title, such as 'Criminal Code', 'Penal Code', 'Code of Civil Procedure', 'Private Corporations', 'Railroad Corporations', and the like, are familiar illustrations of what may be legitimately included in one act. * * * The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions

of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification. The generality of the title of an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The title was never intended to be an index of the law."

These rules and tests have been applied in a great many later cases. City of Crookston v. Polk County, 79 Minn. 283, 82 N. W. 586; Lien v. Norman County, 80 Minn. 58, 82 N. W. 1094; State Skyllingstad v. Gunn, 92 Minn. 436, 100 N. W. 97; Atwell v. Parker, 93 Minn. 462, 101 N. W. 946; Johnson v. Schmahl, 119 Minn. 179, 137 N. W. 741; State v. Sharp, 121 Minn. 381, 141 N. W. 526; Gard v. Otter Tail County, 124 Minn. 136, 144 N. W. 748; State v. Droppo, 126 Minn. 68, 147 N. W. 829; State ex rel City of Hastings v. Dakota County, 142 Minn. 223, 171 N. W. 801; Naeseth v. Village of Hibbing, 185 Minn. 526, 242 N. W. 6; Blaisdell v. Home Building & Loan Assn., 189 Minn. 422, 249 N. W. 334.

A title broader than the statute, if it is fairly indicative of what is included in it, does not offend the constitution. [fol. 69] State ex rel Young v. Standard Oil Co., 111 Minn. 85, 126 N. W. 527; Seamer v. G. N. Ry. Co. 142 Minn. 376, 172 N. W. 765. Whether or not a title is expressive of the subject matter of an act must be determined with reference to practical considerations, the purpose of the constitutional provision, the approach adopted by this court to the problem in the past, and the disposition of other cases involving titles of similar brevity.

Applying these principles to the statute before us it can be said: (1) If the term "psychopathic personality" gives sufficient notice that the act relates to sexually irresponsible persons, the class embraced by the terms of the statute is adequately named in the title, and (2) if the act affects such persons in a manner and by a mode reasonably to be associated with laws of this type, the fact that the title fails to mention such provisions does not render it too general from a constitutional viewpoint.

It is true that the term "psychopathic" is not a part of the working vocabulary of most people. Yet the reasonably

well-informed recognize it as having reference to mental disorders. (See The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, supra). To those concerned with mental cases, it connotes a condition of the mind causing the person afflicted to be hopelessly immoral. In either case, the fact that the law deals with the sexually irresponsible would not come as a surprise to legislators or members of the public who might have occasion to read its title.

Since the title indicates that the act deals with persons of abnormal minds, the manner in and the mode by which the law is to operate are clearly germane to the subject expressed. That the statute is essentially the same in these respects as are the laws of this state which apply to insane, idiots and inebriates appears sufficiently to indicate this fact.

[fol. 70] Examination of titles held not to be violative of the constitutional provision fortifies the conclusion which we have reached. In Johnson v. Harrison, supra, the title in question was "An Act to Establish a Probate Code." The body of the entitled act includes provisions which cast the descent and determine in whom property left by an intestate shall vest and which allow this title to be asserted by the heir in courts other than probate wholly independent of any action of or administration in the latter, as well as provisions fixing the jurisdiction of and procedure in the probate court.

In State v. McDow, 183 Minn. 115, 235 N. W. 637, it was held that "An ordinance relating to disorderly houses, and houses of ill-fame and common prostitutes" is not repugnant to the charter provision which requires that the title to an ordinance shall not contain more than one subject. And in Kerst v. Nelson, 171 Minn. 191, 197, 213 N. W. 904, an act entitled "An act in relation to the organization of the state government" was considered to be sufficiently specific. See also Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393; State v. Helmer, 169 Minn. 221, 211 N. W. 3; State v. People's Ice Company, 124 Minn. 307, 144 N. W. 962; State v. Women's and Children's Hospital Association, 150 Minn. 247, 184 N. W. 1022.

Turning to recent decisions from other states having similar constitutional provisions we find that the following titles have been considered not too general in a constitutional sense: "An act relating to marriage and divorce"

(Titus v. Titus, 96 Color. 191, 193, 41 P. 2nd 244); "An act relating to corporations" (759 Riverside Ave., Inc. et al. v. Marvin, 109 Fla. 473, 475, 147 So. 848); "An act relating to disputes concerning terms and conditions of employment." (Fenske Bros. v. Upholsterers Union, 358 Ill. 239, 193 N. E. 112, 97 A. L. R. 1318); "An act concerning husband and wife, and declaring an emergency" Clark v. Clark, 202 Ind. 104, 111, 172 N. E. 124; "An act relating to cities of the first class" (City of Wichita v. Sedgwick County, 110 Kan. 471, 204 Pac. 693); "An act relating to crimes and [fol. 71] punishments" (Allen v. Commonwealth, 272 Ky. 533, 114 S. W. 2nd 757; "An act concerning the welfare of children" (Richardson v. State Board of Control, 98 N. J. L. 690, 121 Atl. 457, affirmed in 99 N. J. L. 516, 123 Atl. 720); "An act relating to warehouse receipts" (Commonwealth v. Rink, 267 Pa. 408, 110 Atl. 153).

We conclude, therefore, that the constitutional mandate is not violated by the title here in question. Its defects may offend the principles of legislative draftsmanship but not those of constitutional law.

3. Is the act so indefinite and uncertain as to make it void? Conceding that it is imperfectly drawn, the statute is nevertheless valid if it contains a competent and official expression of the legislative will. State v. Partlow, 91 N. C. 550, 49 Am. R. 652. Judicial interpretation cannot operate until the law making department of the state has spoken intelligibly. On the other hand, out of deference to legislative authority, we must give effect to all its enactments, according to its intention, so far as we have constitutional right and power. Attorney General v. City of Eau Claire, 37 Wis. 400, 438. To this end, we must, when confronted with a statute which is susceptible of different interpretations, accept that one which is in conformity with the purpose of the act and in harmony with the provisions of the constitution. See State v. Standard Oil Co., 61 Neb. 28, 33, 84 N. W. 413, 413, 87 Am. St. Rep. 449; Grenada County Supervisors v. Brogden, 112 U. S. 261, 5 Sup. Ct. 125, 28 L. ed. 704.

Statutes must be so construed as to give effect to every section and part, and when any doubts arise as to the constitutionality thereof such doubts must be resolved in favor of the law. Hurst v. Town of Martinsburg, 80 Minn. 40, 82 N. W. 1099; Hunter v. City of Tracy, 104 Minn. 378, 116 N. W. 922. Again, it has been said: "It is the bounden duty of courts to endeavor by every rule of construction to ascer-

tain the meaning of, and to give full force and effect to, every enactment of the general assembly not obnoxious to constitutional prohibitions. But if, after exhausting every [fol. 72] rule of construction, no sensible meaning can be given to the statute, or if it is so incomplete that it cannot be carried into effect, it must be pronounced inoperative and void." Lewis, Sutherland, St. Const., (2 ed.) pp. 140, 141. See also 6 Dunnell, Minn. Dig. (2 ed. & Supps.) § 8995, and cases cited; Aigler, Legislation in Vague or General Terms, 21 Mich. L. Rev. 831; 44 Harv. L. Rev. 1139; 45 Harv. L. Rev. 160.

Applying these principles to the case before us, it can reasonably be said that the language of Section 1 of the act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be, an unwarranted departure from the accepted meaning of the words defined. See Draper, "Mental Abnormality in Relation to Crime" Am. Jour. of Med. Jur., Vol. 2, No. 3, p. 163.

Section 2 of the act incorporates by reference all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane and to persons found to be insane. Such practice has been held proper. Hasset v. Welch, 303 U. S. 303, 314, 58 Sup. Ct. 559, 82 L. Ed. 858; Hagler v. Small, 307 Ill. 460; Land Co. v. Brown, 73 Wis. 294, 40 N. W. 482, 3 L. R. A. 432. It has not been made to appear that those charged with administration of the insane laws have experienced any insuperable difficulties in understanding the provisions thereof. Since this act, in effect, merely extends the concept of insanity to include sexually irresponsible persons who are dangerous to others, we see no reason why such reference should be considered meaningless.

[fol. 73] Section 3 of the act provides that the existence in any person of a condition of psychopathic personality

shall not constitute a defense to a charge of crime. On its surface, this section would appear to imply that persons with psychopathic personalities are sane. The confusion which is thus caused is obviated when we consider the limited scope of the term "insanity" when used to indicate a defense to crime. In this state, an uncontrollable and insane impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act, is not allowed to relieve a person of criminal liability. State v. Scott, 41 Minn. 365, 43 N. W. 62; State v. Simenson, 195 Minn. 258, 262 N. W. 638. See 17 Minn. L. Rev. 630. The act before us, in providing for the care and commitment of persons having uncontrollable and insane impulses to commit sexual offenses, treats them as insane. While the public welfare requires that they be treated before they have opportunity to injure others, it does not necessarily follow that their malady must excuse them from criminal conduct occurring in the past.

The final argument of the relator is that the act denies a "patient" a jury trial and fails to secure certain other rights of defendants in criminal proceedings. Since the proceedings here in question are not of a criminal character, we will confine ourselves to consideration of relator's right to a jury trial. While persons cannot be adjudged insane and committed without notice and an opportunity to be heard (State ex rel. Blaisdell v. Billings, 55 Minn. 467, 57 N. W. 206, 794; State ex rel. Kelly v. Kilbourne, 68 Minn. 320, 71 N. W. 396. See 43 Am. St. Rep. 531) the majority of the courts hold, and we think properly, that the constitutional right to a jury trial does not apply to proceedings of this type. Re O'Connor, 29 Cal. App. 225, 155 Pac. 115; Gaston v. Babcock, 6 Wis. 490; County of Black Hawk v. Springer, 58 Iowa 417. Contra In re McLaughlin, 87 N. J. Eq. 138, 102 Atl. 439; Com. ex rel. Stewart v. Kirkbride, 2 [fol. 74] Brewst. (Pa.) 419; Shumway v. Shumway, 2 Vt. 339.

If relator has a right to a jury trial, it is because such was provided at common law when our constitution was adopted. While no one has contended that "psychopathic personalities" were confined and treated at common law, the claim has been made that the issue of idiocy was, in early times, decided by a jury. The other view is that if such ever was the case, the practice had been abandoned before our constitution was adopted. That we are committed to the latter belief appears quite unequivocally from the lan-

guage of this court in Vinstad v. State Board of Control, 160 Minn. 264, 211 N. W. 12. Referring to proceedings in district court upon an appeal from an order of the probate court denying the petition of one adjudged feeble minded for restoration to capacity, the court there said that the constitutional right of trial by jury does not apply to proceedings for placing persons under guardianship. The question of guardianship was held not triable by jury as a matter of right, either in probate or district courts. It was added, however, that the district court could, in its discretion, send an issue of fact to the jury for a special verdict.

We conclude that the act is constitutional both in form and in application.

The restraining order is vacated and the writ quashed.

Gallagher, C. J.

Mr. Justice Hilton, being incapacitated by illness, took no part.

[fol. 75] IN SUPREME COURT OF MINNESOTA

32163

STATE OF MINNESOTA ex rel. CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, and HON. ALBIN S. PEARSON, Judge of said Probate Court of Ramsey County, Respondents

JUDGMENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Writ of Prohibition issued out of this Court on May 5th, 1939, and directed to the Probate Court of Ramsey County, Minnesota, and the Hon. Albin S. Pearson, Judge of said Court of Ramsey County, be, and the same is quashed and the restraining order vacated.

And it is further determined and adjudged that respondents herein do have and recover of relator herein the sum and amount of

Fifty three and 60/100 Dollars, ($53.60) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed August 31, 1939.

By the Court.

Attest: Grace Kaercher Davis, Clerk.

[fols. 76-80] Praecipe for transcript of record, filed Sept. 11, 1939, omitted in printing.

[fol. 81] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 82] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF NECESSARY PARTS OF RECORD—Filed Sept. 21, 1939

Pursuant to Rule 13, paragraph 9, of the Rules of the Supreme Court of the United States appellant states that he intends to rely upon all of the assignments of error filed by him to which reference is hereby made without repetition as said assignments are a part of the transcript and will be included in the printed record.

In support of said assignments of error appellant will claim, amongst other things, that Chapter 369, Laws of Minnesota for 1939, is void because repugnant to the guarantees contained in Section 1 of the Fourteenth Amendment to the Constitution of the United States in that:

(a) It is too vague, indefinite and uncertain to constitute valid legislation.

(b) It is void as class legislation because only applicable to a part of the class dealt with.

(c) There are no provisions in the act itself safeguarding and protecting human rights and securing to appellant and all others the rights and liberties guaranteed to them by the Fourteenth Amendment to the Constitution.

[fol 83] (d) The act is so arbitrary, unusual and cruel in its provisions and so lacking as to any provisions for the

protection of human rights and liberties as to offend the good sense of mankind and all the principles of right and justice.

(e) In its essence the act is criminal legislation and void because denying the right to a jury trial.

Appellant designates such parts of the record as necessary for a consideration of said points as is referred to in a stipulation of the parties relating thereto attached hereto and filed herewith.

Dated Sept. 16th, 1939.

Joseph F. Cowern, Attorney for Appellant.

Due service of the above Statement and Designation is admitted this 16 day of September, 1939.

John A. Weeks, Attorney for Appellees.

[fol. 84] In Supreme Court of the United States

Stipulation as to Printing of Record

It is stipulated and agreed by and between appellant and appellees, that, in order to save expense in the printing of the record herein, the following portions of the record, the same being considered sufficient to properly present all questions to be reviewed, shall be printed, and no more, to-wit:

(1) Petition for Writ of Prohibition with Exhibits and Order Allowing Writ. (Record pages 1 to 8.)

(2) The Alternative Writ of Prohibition. (That Portion of Writ Which Simply Copies the Petition and Its Exhibits Being Omitted and a Reference Made Indicating the Reason for such Omission.) (Record pages 9 to 16.)

(3) The Return and Additional Return (Record pages 17 to 26) Omitting, with Appropriate Reference, Exhibits Already Appearing in the Record.

(4) Petition for Allowance of Appeal. (Record pages 27, 28.)

[fol. 85] (5) Order Allowing Appeal. (Record pages 29, 30.)

(6) Assignment of Errors and Prayer for Reversal. (Record pages 31 to 33.)

(7) Citation with Proof of Service and Appearance. (Record pages 54, 55.)

(8) Certificate of Chief Justice and Order Making such Certificate Part of Record. (Record page 57.)

(9) Opinion of Court. (Record pages 61 to 74.)

(10) Final Judgment. (Record, page 75.)

(11) Chapter 369 Laws of 1939: (Record, page 44.)

(12) Clerk's Certificate to Record. (Record, page 81.)

(13) Statement of points to be relied upon (to be filed after docketing of case.)

The jurisdictional statement having been separately printed, may be omitted, and a reference only need be made in the printed record to the bond and approval thereof, the praecipe to clerk below, notice to appellees of paragraph 3 of Rule 12 and admission of service thereof, and the separate admission of service of the various papers shown at Record, page 60, it being thought that such documents throw no light on the questions involved. Pursuant to Rule 13 paragraph 9, titles, when repeated, and obviously unimportant matter shall be omitted.

As to the printing of Chapter 369, Laws of 1939, and the opinion of the Supreme Court of Minnesota (numbers 9 and 11 above), they are attached to the jurisdictional statement which we understand is separately printed, and, if the rules and custom of the United States Supreme Court permit, they might be omitted from the printed record in order to avoid the expense of printing them twice. [fol. 86] It is further stipulated and agreed that, if from oversight or omission, any necessary part of the record be not printed the portions omitted may be printed later.

Dated September 14th, 1939.

Joseph F. Cowern, Counsel for Appellant. John A. Weeks, Counsel for Appellees.

[fol. 87] [File endorsement omitted]

Endorsed on Cover: File No. 43,801 Minnesota, Supreme Court, Term No. 394 State of Minnesota ex rel. Charles Edwin Pearson, Appellant, vs. Probate Court of Ramsey County, Minnesota, and Hon. Michael F. Kinkead, Judge of said Probate Court of Ramsey County. Filed September 16, 1939. Term No. 394 O. T. 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 394

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,

Appellant,

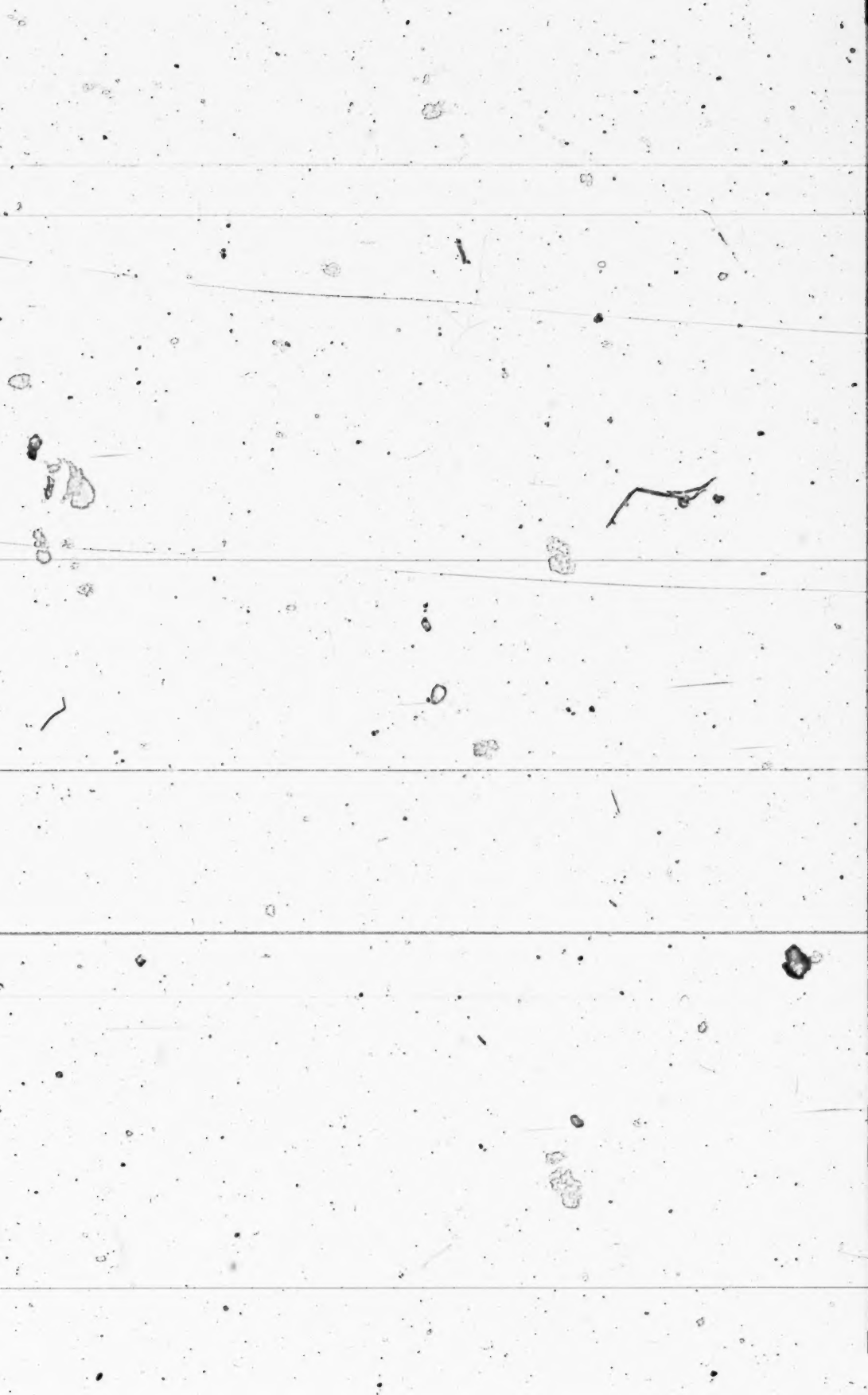
vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. ALBIN S. PEARSON, JUDGE OF SAID PROBATE COURT OF RAMSEY COUNTY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT AS TO JURISDICTION.

JOSEPH F. COWERN,
Counsel for Appellant.



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IN SUPREME COURT, STATE OF MINNESOTA

No. 32163

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,

Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. ALBIN S. PEARSON, JUDGE OF SAID PROBATE COURT OF RAMSEY COUNTY,

Respondents.

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellant, Charles Edwin Pearson, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

(a) Statutory Provision Sustaining Jurisdiction.

In the State court appellant attacked a State statute as repugnant to the Constitution of the United States. The

Supreme Court of Minnesota, having rendered its decision in favor of the validity of said statute, appellant, under Section 237 of the Judicial Code, as amended (U. S. C. A., Title 28, Section 344), is given a direct right of appeal to the Supreme Court of the United States.

(b) Reference to Statute Attacked.

The Minnesota statute involved is Chapter 369 of the Laws of 1939. It is published in the official edition, Session Laws of 1939, on pages 712, 713. Pursuant to Rule 12 of the Supreme Court of the United States appellant sets out said Chapter 369 verbatim as an appendix to this jurisdictional statement. Its provisions will be discussed later in this statement.

(c) Date of Judgment.

Final judgment was entered in the Supreme Court of Minnesota on August 31st, 1939. The application for appeal was presented September 6th, 1939.

(d) Nature of Case and Rulings of the Minnesota Supreme Court.

On May 5th, 1939, appellant filed in the Supreme Court of the State of Minnesota his petition seeking a writ of prohibition, directed to the Probate Court of Ramsey County and the Hon. Albin S. Pearson, judge thereof, requiring that they desist and refrain from further proceeding in a prosecution directed against appellant and based on Chapter 369 Laws of 1939. A warrant for appellant's arrest under said statute had been issued and appellant was about to be arrested and imprisoned. His trial in the Probate Court had been set for May 5th, 1939. The charge upon which the warrant for appellant's arrest was issued was that the "petitioner believes" that appellant is a "psychopathic personality."

In his petition and in the briefs and oral argument appellant contended that Chapter 369 was invalid as repugnant to the Constitution of Minnesota and the Constitution of the United States. The details of appellant's contentions will appear later.

The Supreme Court of Minnesota sustained the validity of the statute and this appeal followed.

This being an original proceeding in the Supreme Court of Minnesota, there is no record or settled case to which appellant can give page or other specific reference as required by Rule 12 of the Supreme Court of the United States. Those references we are willing to supply after the record is made up, if they are then deemed important. The constitutional objections urged by appellant are all set out in his petition.

Complying further with said Rule 12 appellant states that the Federal questions sought to be reviewed were raised by his petition initiating the proceeding filed in the Supreme Court of Minnesota. They were first raised in the Supreme Court because it has original jurisdiction in prohibition proceedings. (Art. 6, Sec. 2, Const. of Minn. and Sec. 132, Mason's 1927 Statutes.)

The grounds upon which appellant contends that the questions involved are substantial are that they involve personal liberty and rights guaranteed by the Constitution.

As the petition and assignment of errors disclose, appellant claimed in the Supreme Court of Minnesota, and now claims, that this Chapter 369 violates all of the constitutional guarantees contained in Section 1 of the Fourteenth Amendment in that:

(a) It is too vague, indefinite and uncertain to constitute valid legislation.

(b) It is void as class legislation because only applicable to a part of the class dealt with.

(c) There are no provisions in the act itself safeguarding and protecting human rights and securing to appellant and all others the rights and liberties guaranteed to them by the Fourteenth Amendment to the Constitution.

(d) The act is so arbitrary, unusual and cruel in its provisions and so lacking as to any provisions for the protection of human rights and liberties as to offend the good sense of mankind and all the principles of right and justice.

(e) In its essence the act is criminal legislation and void because denying the right to a jury trial.

Some light will be thrown on these questions if we compare Chapter 369 with a recent act of the Illinois Legislature. The Illinois act is House Bill No. 36, approved July 6, 1938, and it may be found on pages 28-30 of the Laws of Illinois, 60th General Assembly, First and Second Special Sessions 1938. So far as we know the validity of this Illinois act has not yet been passed upon and as to that we express no opinion.

The Minnesota Act	The Illinois Act
No classification	Classified under the heading: "Criminal Code," with a subheading: "Commitment and Detention of Sexual Criminals."
The title is: "An act relating to persons having a psychopathic personality." (This gives no information whatever as to what class will be dealt with in the body of the act. When this act was introduced not one man in a million could have stated what the body of the act would deal with. Whoever ventured an opinion would have been guessing.)	The title is: "An act to provide for the commitment and detention of criminal sexual psychopathic persons." (This gives considerable information.)

The Minnesota Act	The Illinois Act
Embraces only such persons whose disorder could be traced to a few harmless qualities, common to most men, enumerated in section 1. All others are exempt.	Embraces *all* persons suffering with the disorder dealt with.
No limit.	The disorder must have existed one year.
No such provision.	Persons must first have been charged with crime.
No such provision. All the court need do is to appoint two "licensed doctors."	The court is required to appoint two qualified psychiatrists to make examination.
No requirement. Anyone holding a license is qualified. That he has had no experience and, in fact, has no qualifications to pass on such matters is no bar. The men appointed may never have heard of a psychopathic personality.	To qualify as a competent psychiatrist, a doctor must be: "A reputable physician licensed to practice in Illinois and who has exclusively limited his professional practice to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years."
No provision for jury trial. Under Mason's 1927 Minnesota Statutes, Sec. 8959 (made a part of the act by reference) if the two doctors (who are not required to know anything about psychopathic personalities) determine that the accused is "dangerous," the court "shall" commit him for life to an insane asylum for the dangerously insane.	A jury "shall be impaneled" to ascertain the ultimate fact in issue.
No provision in the act for hospitalization. Commitment is to an insane asylum for the "dangerous insane." Sec. 8959 Mason's Statutes, 1927.	Commitment is to a hospital staffed to adequately treat the disorder.
Commitment is for life. Sec. 8959, Mason's Statutes, 1927.	Commitment is "until recovery."
Authorizes private hearings.	The act contemplates a public hearing before a jury.

The above is sufficient to demonstrate that, both by what it omits as well as by what it includes, this Chapter 369 is a legal monstrosity.

Section 2 of Chapter 369 provides that "*all* laws now in force or hereafter enacted relating to insane persons" shall apply "with like force and effect" to persons "having a psychopathic personality", and, also, "to persons *alleged* to have such personality". There is no limitation to procedural matters. Under Section 8959, Mason's 1927 Minnesota Statutes, made a part of Chapter 369 by reference, the Probate Judge and two doctors constitute the board of examiners. It is not required that any of them know anything about psychopathic personalities. If they determine that the accused is "dangerous to the public" then he "*shall* be committed" to an asylum "for the dangerous insane" for the rest of his life, unless a new board should later find him no longer dangerous. It is not required that this new board should know anything about psychopathic personalities. There is no difference between "dangerous to other persons" and "dangerous to the public"—so far as the accused is concerned "the public" are "other persons". Under the provisions of this act a perfectly sane man:

(a) Can be committed for life.

(b) To a lunatic asylum for the "dangerous insane."

(c) As a result of a private hearing.

(d) Without benefit of counsel.

(e) In a county remote from his residence.

(f) Without benefit of a jury trial.

(g) Without the presence of witnesses on his behalf.

(The act, it is true, provides for the issuance of subpoenas, but it makes no provision for the service thereof, or for the payment of witness fees and mileage. Of course, if this is

a criminal proceeding (as we claim it is) then the accused would be entitled to "compulsory" process for obtaining witnesses without the payment of witness fees or mileage. Const. of Minn. Art. 1, section 6, section 7017 Mason's 1927 Minn. Statutes.)

(h) On examination by two doctors who have no knowledge whatever of psychopathic personalities and may never have heard the term used. It is not even required that they be in active practice.

(i) Without hospitalization or specialized care.

In addition, the blanket reference making all laws relating to the insane applicable to psychopathic personalities can take away from a sane man, the franchise, the right to marry, the right to contract or convey property, and it renders him incompetent as a witness and subjects him to all other disabilities of the insane. His home may be broken up and his business destroyed.

Why go further? The above should demonstrate that this Chapter 369 violates all of the constitutional guarantees contained in Section 1 of the Fourteenth Amendment to the Constitution of the United States, and fully justifies the report of the Committee on Psychiatric Jurisprudence (a joint committee representing the American Bar Association, the American Medical Association, the American Psychiatric Association and the American Neurological Association) who reported to the American Bar Association at its 1938 meeting that:

> "It was thought premature to urge such a law until there is a more substantial agreement on the part of medical men and psychiatrists as to the definition of the term 'Psychopathic Personality.'"

The above quotation may be found in the October 1938 issue of the American Journal of Medical Jurisprudence.

The act is too vague and indefinite to constitute valid legislation. There will be as many different interpretations of numerous provisions thereof as there are county attorneys and probate judges. The writer has before him an analysis of the act and the opinion sustaining it prepared by a skilled attorney in the office of the county attorney of one of the large counties of the State. He thinks that emotional instability, for instance, must exist by reason of "inherited tendencies" and not because of environmental conditions and that it must be manifested by an arrested development of certain faculties, and that the other elements mentioned, or a combination thereof, must be manifested with respect of sexual matters "by reason of similar conditions". He says: "If these factors are not shown to exist, then a hearing under the law, in my opinion, is not warranted." He finds no inkling in the act as to the burden of proof, but feels that the court should require "a degree of proof beyond a reasonable doubt". And he gives as his reason therefor "because man's liberty is at stake" and adds:

> "This should be true despite the fact that Section 3 of the act provides that the determination shall not constitute a defense to a charge of crime."

He guesses that the provision making all laws relating to insane persons applicable to psychopathic personalities has reference only to "commitment after adjudication". He thinks that an "overt act" is unnecessary for an adjudication, and in many other respects he has to wander in a fog of doubt and uncertainty before expressing an opinion.

No one can tell what the legislature meant by the word "dangerous" in Section 1 of the act. Do they refer to physical injury or to a weakening of the morals or mind of others? No one can tell. What is meant by "irre-

sponsible", "emotional instability", "impulsiveness of behavior", etc. No one can tell.

It is very evident that we are to have as many different rules and guesses as to most of the provisions of this act as there are county attorneys, licensed doctors and probate judges in the State, and all this in a proceeding where, after adjudication, the court is given no discretion as to commitment as, under Section 8959, Mason's 1927 Statutes, the court "shall" commit the person involved to a lunatic asylum for the dangerously insane for the rest of his life.

Attention has been called to the fact that the Illinois act applies to "all persons" within the class dealt with. The "class" dealt with in Chapter 369 are persons "irresponsible" for their conduct "with respect to sexual matters", but all members of such class are not included. Section 1 of the act exempts all members of such class whose condition is not traceable to one or more of certain designated traits common to all of us—and in some cases commendable traits. The act exempts more members of the class than it covers.

If there is any need for an act of this nature, clearly it should embrace all of the class and unless it does so it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States. An act dealing with redheaded psychopathics would be void as class legislation. There is no essential difference between such an act and Chapter 369.

As required by Rule 12, we append to this statement a copy of the opinion of the Supreme Court of Minnesota.

(e) Cases Sustaining the Jurisdiction.

Proceedings for writ of prohibition have been held to be "suits" and the judgments disposing thereof "final judg-

ments" within the statute permitting a review by the Supreme Court of the United States.

Weston v. *City Council of Charleston*, 27 U. S. (2 Pet.) 449.

Bandini etc. Co. v. *Superior Court of State of California*, 284 U. S. 8, 52 S. C. R. 103.

And it has been held that denial of prohibition without opinion by the highest court of the State is a final decision.

Michigan Central Co. v. *Mix*, 278 U. S. 492, 49 S. C. R. 207.

The following additional authorities clearly indicate that the questions involved are substantial, and that appellant is not attempting to present a frivolous question when he claims that the act involved is repugnant to the Fourteenth Amendment to the Constitution of the United States.

Lanzetta et al. v. *State*, 59 S. C. R. 618.

United States v. *Cohen Co.*, 255 U. S. 81, 41 S. C. R. 298.

Connolly, Com. v. *General Const. Co.*, 269 U. S. 385, 46 S. C. R. 126.

United States v. *Armstrong*, 265 Fed. 683.

United States v. *Capital Co.*, 34 App. D. C. 592.

Herndon v. *Lowry*, 301 U. S. 242, 57 S. C. R. 732.

Yick Wo. v. *Hopkins*, 118 U. S. 356, 6 S. C. R. 1064.

Bank v. *Okely*, 4 Wheaton 235.

International Harvester Co. v. *Kentucky*, 234 U. S. 216, 34 S. C. R. 853.

Collins v. *Kentucky*, 234 U. S. 634, 34 S. C. R. 924.

And see the cases collected in Cooley's Constitutional Limitations (8th ed.), pages 733, 739, 740, 806 to 825.

Respectfully submitted,

JOSEPH F. COWERN,
Attorney for Appellant, St. Paul, Minnesota.

EXHIBIT "A".

Chapter 369—H. F. No. 1584.

An act relating to persons having a psychopathic personality.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Definitions.—The term "psychopathic personality" as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons.

Sec. 2. Laws Relating to Insane Persons, etc., to Apply to Psychopathic Personalities.—Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively. Provided however, before such proceedings are instituted, the facts shall first be submitted to the county attorney, who, if he is satisfied that good cause exists therefor, shall prepare the petition to be executed by a person having knowledge of the facts, and shall file the same with the judge of the probate court of the county in which the "patient", as defined in such statutes, has his settlement or is present. The judge of probate shall set the matter down for hearing and for examination of the "patient". The judge may at his discretion exclude the general public from attendance at such hearing. The "patient" may be represented by counsel; and if the court determines that he is financially unable to obtain counsel, the court may appoint counsel for him. The "patient" shall be entitled to have subpoenas issued out of said court to compel the attendance of witnesses in his behalf. The court shall appoint two duly licensed doctors of medicine to assist in the examination

of the "patient". The proceedings had shall be reduced to writing and shall become part of the records of said court. From a finding made by such court of the existence of psychopathic personality, the "patient" may appeal to the district court upon compliance with the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 8992-166, 8992-167, 8992-169, 8992-170.

Sec. 3. Not to Constitute Defense.—The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure.

Sec. 4. Inconsistent Acts Repealed.—All acts and parts of acts inconsistent herewith are hereby repealed.

Approved April 21, 1939.

(Session Laws of Minnesota for 1939.)

"EXHIBIT "B".

COPY

No. 153. Ramsey County Gallagher, C. J.

32163.

STATE OF MINNESOTA ex rel. CHARLES EDWIN PEARSON, Relator,

vs.

PROBATE COURT OF RAMSEY COUNTY, and HON. A. S. PEARSON, Judge, Respondents.

Syllabus.

1. Chapter 369, L. 1939, which subjects persons who are irresponsible for their conduct in sexual matters and thereby dangerous to others to the jurisdiction of the probate court is not violative of constitutional limitations on the jurisdiction of that court.

2. An act entitled "A Bill for an Act Relating to Persons Having a Psychopathic Personality" and providing for the care and commitment of sexually irresponsible persons dangerous to others does not violate Art. 4, Sec. 27, of the state constitution which provides: "No law shall embrace more than one subject, which shall be expressed in its title."

HELD, (a) The Provisions of c. 369, L. 1939, are not so indefinite and uncertain as to render the statute void.

(b) While due process of law requires notice and opportunity to be heard, the constitutional right to a jury trial does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others.

Writ quashed.

* * * * * * *

OPINION

GALLAGHER, Chief Justice.

On April 27, 1939, James A. Cook, a police officer of the city of St. Paul, filed in the probate court of Ramsey county a petition verified on information and belief, charging one Charles Edwin Pearson with being a psychopathic personality as defined by c. 369, Session Laws of Minnesota, 1939, and praying for his commitment according to law. On certification by the county attorney of his satisfaction that good cause existed for the institution of the proceedings, the probate court issued an order requiring the sheriff of Ramsey county to forthwith bring the said Pearson before the court and another order fixing a hearing on the petition for May 5, 1939, at two o'clock P. M.

Before the service of these Orders, relator applied to this court for a writ of prohibition and on his verified petition attacking the constitutionality of the act under which the proceedings were instituted we issued a temporary writ prohibiting the probate court from proceeding with the hearing until the further order of this court. The matter is now here on relator's application to make the writ permanent.

Because of a recognized need for legislation to deal with sex offenders and a belief, shared in by medical authorities and others, that sex crimes are committed because of a weakness of the will as well as of the intellect, the 1939 legislature enacted c. 369 entitled: "A Bill for an Act Relating to Persons Having a Psychopathic Personality." Section 1 of the act reads:

> "The term 'psychopathic personality' as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

Section 2, in part, reads:

> "Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively."

The act also provides that the facts be submitted to the county attorney and his approval be procured before a petition be filed with the probate court; that the probate judge may at his discretion exclude the public from the hearing; that the patient may be represented by counsel and if the court determines that the patient is financially unable to obtain counsel, it is empowered but is not required to appoint counsel for him; and that the patient shall be entitled to have subpoenas issued to compel the attendance of witnesses. From a finding that a "patient" is a "psychopathic personality" he may appeal to the district court upon compliance with the provisions of 3 Mason Minn. St. 1938 Supp. secs. 8[illegible]2-166, 167, 169 and 170.

Section 3 of the act reads:

> "The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure."

Relator challenges the constitutionality of c. 369, L. 1939, on three grounds. He contends: (1) That it violates Article 6, sec. 7, of the constitution of Minnesota defining and limiting the jurisdiction of probate courts; (2) that it violates Article 4, sec. 27, of the constitution of Minnesota, which reads: "No law shall embrace more than one subject, which shall be expressed in its title" and (3) that it is void because it is uncertain and indefinite and violates the Fourteenth Amendment to the Constitution of the United States and other constitutional provisions.

1. We deal first with the question of the power of the legislature under our constitution to confer upon the probate court jurisdiction over persons having what is termed a "psychopathic personality."

Article 6, sec. 1 of the Minnesota constitution reads: "The judicial power of the State shall be vested in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the Supreme Court, as the legislature may from time to time establish by a two-thirds vote."

Section 7 of the same Article, in part, reads: "A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this Constitution."

It will be noted that the constitution specifically limits the jurisdiction of the probate court to "estates of deceased persons and to persons under guardianship." If persons having "psychopathic personalities" are to be included among those over whom the probate court has jurisdiction, it must be because they are persons subject to guardianship.

The constitution does not specifically state what class of persons are subject to guardianship but leaves the regulation of that question to the legislature. It was so decided in State *v.* Wilcox, 24 Minn. 143, where the court said: "The manner in which jurisdiction conferred by the constitution on any court or officer shall be exercised when not prescribed by the constitution itself, or the power to regulate it vested elsewhere, may be regulated by the legislature." It was there held that the putting under guardianship of all persons who are proper subjects for it—insane persons, incorrigible drunkards, idiots, spendthrifts, as well as minors—comes within the jurisdiction of the probate court.

While this court in State *v.* Wilcox, *supra*, referred only to insane persons, incorrigible drunkards, idiots, spendthrifts and minors as included in the class subject to guardianship within the jurisdiction of the probate court we do not think it was intended for all time to limit the classification to those named or to deprive the probate court of jurisdiction over other types of "unnaturals" such as the class involved herein.

Leavitt *v.* City of Morris, 105 Minn. 170, 117 N. W. 393, held constitutional c. 288, L. 1907, creating and establishing a hospital farm for inebriates, and authorizing the State board of control to purchase lands therefor and to provide means for the building and maintenance of such institution. This case recognized the jurisdiction of the probate court over persons defined by the act as "inebriates" and approved the procedure prescribed for hearing and commitment.

The constitutionality of c. 397, L. 1917, known as "The Juvenile Court Act" was determined in Peterson *v.* McAuliffe, 151 Minn. 467, 187 N. W. 226. That act placed jurisdiction over juvenile offenders in the district court in counties having more than 33,000 inhabitants and in the probate court in counties having not more than 33,000 inhabitants.

Chapter 369, L. 1939, sec. 1, defines the term "psychopathic personality" to mean "the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts,

or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons." The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, defines "psychopathic" as "pertaining to mental disease." It naturally follows that a "psychopathic personality" is one characterized by a mental disorder. It is well recognized that there are many types and degrees of mental disorders. An article appearing in volume 2, March-April, 1939, Number 3 Edition of "The American Journal of Medical Jurisprudence" on "Mental Abnormality in Relation to Crime" refers to "psychopathic personalities" as:

> "These are individuals who show a lifelong and constitutional tendency not to conform to the customs of the group. They habitually misbehave. They have no sense of responsibility to their fellow-men or to society as a whole. Due to their inherent inability to follow any one occupation, they succumb readily to the temptation of getting easy money through a life of crime. There is usually a history of delinquency in early life. These individuals fail to learn by experience. They are inadequate, incompatible, and inefficient. This class is sometimes designated as 'Constitutional Psychopathic Inferiority.' Before making this diagnosis, every other diagnostic possibility must be considered and excluded. In this group we see pathological lying, prostitution, vagrancy, illegitimacy, alcoholism and drug addiction. The term 'moral deficiency' is sometimes used to characterize this group. These patients may have psychotic episodes superimposed upon the trends just mentioned. Many of these individuals come into contact with the courts on account of threats, assaults, quarrels and vagrancy."

It is to be noted that the definition given above includes not only the sexually irresponsible but also others of immoral tendencies. The fact that the legislature has chosen to limit the class to the former does not make the act more or less objectionable from a jurisdictional standpoint. Whether the limitation constitutes a basis for objection on the

ground that the title fails to express the subject of the act will be later considered.

While the abnormalities of the group placed under the jurisdiction of the probate court by this act differ in form from those which characterize inebriates, idiots and insane persons, the need for observation and supervision is the same and the considerations which led this court in State *v.* Wilcox, *supra*, to recognize the latter as being proper subjects for guardianship apply with equal force to the former. In the interest of humanity and for the protection of the public, persons so afflicted should be given treatment and confined for that purpose rather than for the purpose of punishment. This we believe to be true even though their mental deficiencies might not be such as to require absolving them from the effects of the criminal statutes. We find no difficulty in holding that the legislature may give to the probate court jurisdiction over such personalities.

2. It is urged by relator that c. 369, L. 1939, is void because in violation of Article 4, sec. 27, of the constitution of Minnesota, which reads: "No law shall embrace more than one subject, which shall be expressed in its title." Cases of two kinds arise under this and similar constitutional provisions: (1) Those in which it is claimed that the title is so general in its terms that it does not fairly express the subject of the act, and (2) those in which it is claimed that the subject as expressed in the title excludes, by implication, certain provisions of the act. The instant case is of the first type.

The objects of the constitutional provision have been often expressed in the decisions of this court. They are, first, to prevent "log-rolling legislation", and "omnibus bills", by which a large number of different and disconnected subjects are united in bill and then carried through by a combination of interests; and secondly, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the proposed legislation, or of the interests affected. 6 Dunnell, Minn. Dig. (2 ed.) sec. 8906 and cases cited.

While the provision of the constitution is mandatory, it is to be given a liberal and not a strict construction. John-

son *v.* Harrison, 47 Minn. 575, 50 N. W. 923. The rules to be applied to its construction and the tests to determine whether the law is repugnant to it are expressed by Mr. Justice Mitchell in Johnson *v.* Harrison, *supra*, in language so clear that it warrants adoption. "The term 'subject', as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. * * * All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject. The large number of related or cognate matters often treated of under some comprehensive title, such as 'Criminal Code', 'Penal Code', 'Code of Civil Procedure', 'Private Corporations', 'Railroad Corporations', and the like, are familiar illustrations of what may be legitimately included in one act. * * * The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification. The generality of the title of an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The title was never intended to be an index of the law."

These rules and tests have been applied in a great many later cases. Crookston *v.* Polk County, 79 Minn. 283, 82 N. W. 586; Lien *v.* Norman County, 80 Minn. 58, 82 N. W. 1094; State *v.* Gunn, 92 Minn. 436, 100 N. W. 97; Atwell *v.* Parker, 93 Minn. 462, 101 N. W. 946; Johnson *v.* Schmahl, 119 Minn. 179, 137 N. W. 741; State *v.* Sharp, 121 Minn. 381,

141 N. W. 526; Gard *v.* Otter Tail County, 124 Minn. 136, 144 N. W. 748; State *v.* Droppo, 126 Minn. 68, 147 N. W. 829; State *v.* Dakota County, 142 Minn. 223, 171 N. W. 801; Naeseth *v.* Hibbing, 185 Minn. 526, 242 N. W. 6; Blaisdell *v.* Home Building & Loan Assn., 189 Minn. 422, 249 N. W. 334.

A title broader than the statute, if it is fairly indicative of what is included in it, does not offend the constitution. State *v.* Standard Oil Co., 111 Minn. 85, 126 N. W. 527; Seamer *v.* G. N. Ry. Co., 142 Minn. 376, 172 N. W. 765. Whether or not a title is expressive of the subject matter of an act must be determined with reference to practical considerations, the purpose of the constitutional provision, the approach adopted by this court to the problem in the past, and the disposition of other cases involving titles of similar brevity.

Applying these principles to the statute before us it can be said: (1) If the term "psychopathic personality" gives sufficient notice that the act relates to sexually irresponsible persons, the class embraced by the terms of the statute is adequately named in the title, and (2) if the act affects such persons in a manner and by a mode reasonably to be associated with laws of this type, the fact that the title fails to mention such provisions does not render it too general from a constitutional viewpoint.

It is true that the term "psychopathic" is not a part of the working vocabulary of most people. Yet the reasonably well-informed recognize it as having reference to mental disorders. (See The American Illustrated Medical Dictionary, Fifteenth Edition, by Dorland, *supra*). To those concerned with mental cases, it connotes a condition of the mind causing the person afflicted to be hopelessly immoral. In either case, the fact that the law deals with the sexually irresponsible would not come as a surprise to legislators or members of the public who might have occasion to read its title.

Since the title indicates that the act deals with persons of abnormal minds, the manner in and the mode by which the law is to operate are clearly germane to the subject expressed. That the statute is essentially the same in these respects as are the laws of this state which apply to insane,

idiots and inebriates appears sufficiently to indicate this fact.

Examination of titles held not to be violative of the constitutional provision fortifies the conclusion which we have reached. In Johnson *v.* Harrison, *supra,* the title in question was "An Act to Establish a Probate Code." The body of the entitled act includes provisions which cast the descent and determine in whom property left by an intestate shall vest and which allow this title to be asserted by the heir in courts other than probate wholly independent of any action of or administration in the latter, as well as provisions fixing the jurisdiction of and procedure in the probate court.

In State *v.* McDow, 183 Minn. 115, 235 N. W. 627, it was held that "An ordinance relating to disorderly houses, and houses of ill-fame and common prostitutes" is not repugnant to the charter provision which requires that the title to an ordinance shall not contain more than one subject. And in Kerst *v.* Nelson, 171 Minn. 191, 213 N. W. 904, an act entitled "An act in relation to the organization of the state government" was considered to be sufficiently specific. See also Leavitt *v.* City of Morris, 105 Minn. 170, 117 N. W. 393; State *v.* Helmer, 169 Minn. 221, 211 N. W. 3, State *v.* People's Ice Company, 124 Minn. 307, 144 N. W. 962; Kerst *v.* Nelson, 171 Minn. 191, 213 N. W. 904; State *v.* Women's and Children's Hospital Association, 150 Minn. 247, 184 N. W. 1002.

Turning to recent decisions from other states having similar constitutional provisions we find that the following titles have been considered not too general in a constitutional sense; "An act relating to marriage and divorce" (Titus *v.* Titus, 96 Colo. 191, 41 P. 2nd 244); "An act relating to corporations" (759 Riverside Ave. Inc. et al. *v.* Marvin, 109 Fla. 473, 147 So. 848); "An act relating to disputes concerning terms and conditions of employment," (Fenske Bros. *v.* Upholsterers Union, 358 Ill. 239, 193 N. E. 112, 97 A. L. R. 1312); "An act concerning husband and wife, and declaring an emergency", Clark *v.* Clark, 202 Ind. 104, 172 N. E. 124; "An act relating to cities of the first class" (City of Wichita *v.* Sedgwick County, 119 Kan. 471, 204 Pac. 693); "An act relating to crimes and punish-

ments" (Allen *v.* Commonwealth, 272 Ky. 533, 114 S. W. 2nd 757; "An act concerning the welfare of children" (98 N. J. L. 690, 121 Atl. 437; affirmed in 99 N. J. L. 516, 123 Atl. 730); "An act relating to warehouse receipts" (Commonwealth *v.* Rink, 267 Pa. 408, 110 Atl. 153).

We conclude, therefore, that the constitutional mandate is not violated by the title here in question. Its defects may offend the principles of legislative draftsmanship but not those of constitutional law.

3. Is the act so indefinite and uncertain as to make it void? Conceding that it is imperfectly drawn, the statute is nevertheless valid if it contains a competent and official expression of the legislative will. State *v.* Partlow, 91 N. C. 550, 49 Am. 652. Judicial interpretation cannot operate until the law making department of the state has spoken intelligibly. On the other hand, out of deference to legislative authority, we must give effect to all its enactments, according to its intention, so far as we have constitutional right and power. Attorney General *v.* Eau Claire, 37 Wis. 400, 438. To this end, we must, when confronted with a statute which is susceptible of different interpretations, accept that one which is in conformity with the purpose of the act and in harmony with the provisions of the constitution. See State *v.* Standard, 61 Neb. 28, 84 N. W. 413, 87 Am. St. 449; Grenada County Supervisors *v.* Brogden, 112 U. S. 261, 5 Sup. Ct. 125, 28 L. ed. 704.

Statutes must be so construed as to give effect to every section and part, and when any doubts arise as to the constitutionality thereof such doubts must be resolved in favor of the law. Hurst *v.* Town of Martinsburg, 80 Minn. 40, 82 N. W. 1099; Hunter *v.* City of Tracy, 104 Minn. 378, 116 N. W. 378. Again, it has been said: "It is the bounden duty of courts to endeavor by every rule of construction to ascertain the meaning of, and to give full force and effect to, every enactment of the general assembly not obnoxious to constitutional prohibitions. But if, after exhausting every rule of construction, no sensible meaning can be given to the statute, or if it is so incomplete that it cannot be carried into effect, it must be pronounced inoperative and void." Sutherland, St. Const. pp. 140, 141. See also 6 Dunnell,

Minn. Dig. (2 ed.) sec. 8995, and cases cited. Aigler, Legislation in Vague or General Terms, 21 Mich L. Rev. 831; 44 Harv. L. Rev. 1139; 45 Harv. L. Rev. 160.

Applying these principles to the case before us, it can reasonably be said that the language of Section 1 of the act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be an unwarranted departure from the accepted meaning of the words defined. See Draper, Mental Abnormality, Am. Jour. of Med. Jur., Vol. 2, No. 3, p. 163.

Section 2 of the act incorporates by reference all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane and to persons found to be insane. Such practice has been held proper. Hasset *v.* Welch, 303 U. S. 303, 314, 58 Sup. Ct. 559, 82 L. Ed. 858; Hagler *v.* Small, 307 Ill. 460; Land Co. *v.* Brown, 73 Wis. 294, 40 N. W. 482, 3 L. R. A. 472. It has not been made to appear that those charged with administration of the insane laws have experienced any insuperable difficulties in understanding the provisions thereof. Since this act, in effect, merely extends the concept of insanity to include sexually irresponsible persons who are dangerous to others, we see no reason why such reference should be considered meaningless.

Section 3 of the act provides that the existence in any person of a condition of psychopathic personality shall not constitute a defense to a charge of crime. On its surface, this section would appear to imply that persons with psychopathic personalities are sane. The confusion which is thus caused is obviated when we consider the limited scope of the term "insanity" when used to indicate a defense

to crime. For in this state, an uncontrollable and insane impulse to commit crime, in the mind of one who is conscious of the nature and quality of the act, is not allowed to relieve a person of criminal liability. State *v.* Scott, 41 Minn. 365, 43 N. W. 62; State *v.* Simenson, 195 Minn. 258, 262, N. W. 638. See 17 Minn. L. Rev. 630. The act before us, in providing for the care and commitment of persons having uncontrollable and insane impulses to commit sexual offenses, treats them as insane. While the public welfare requires that they be treated before they have opportunity to injure others, it does not necessarily follow that their malady must excuse them from criminal conduct occurring in the past.

The final argument of the relator is that the act denies a "patient" a jury trial and fails to secure certain other rights of defendants in criminal proceedings. Since the proceedings here in question are not of a criminal character we will confine ourselves to consideration of relator's right to a jury trial. While persons cannot be adjudged insane and committed without notice and an opportunity to be heard (State *v.* Billings, 55 Minn. 467, 57 N. W. 206, 794; State *v.* Kilbourne, 68 Minn. 320, 71 N. W. 396. See 43 Am. St. Rep. 531) the majority of the courts hold, and we think properly, that the constitutional right to a jury trial does not apply to proceedings of this type. Re O'Connor, 29 Cal. App. 225, 155 Pac. 115; Gaston *v.* Babcock, 6 Wis. 503; County of Black Hawk *v.* Springer, 58 Iowa 417. Contra In re McLaughlin, 87 N. J. Eq. 138, 102 Atl. 439; Com. ex rel. Stewart *v.* Kirkbridge 2 Brewst. (Pa.) 419; Shumway *v.* Shumway, 2 Vt. 339.

If relator has a right to a jury trial, it is because such was provided at common law when our constitution was adopted. While no one has contended that "psychopathic personalities" were confined and treated at common law, the claim has been made that the issue of idiocy was, in early times, decided by a jury. The other view is that if such ever was the case, the practice had been abandoned before our constitution was adopted. That we are committed to the latter belief appears quite unequivocally from the language of this court in Vinstad *v.* State Board of Control, 169 Minn. 264, 211 N. W. 12. Referring to proceedings

in district court upon an appeal from an order of the probate court denying the petition of one adjudged feeble-minded for restoration to capacity, the court there said that the constitutional right of trial by jury does not apply to proceedings for placing persons under guardianship. The question of guardianship was held not triable by jury as a matter of right, either in probate or district courts. It was added, however, that the district court could, in its discretion, send an issue of fact to the jury for a special verdict.

We conclude that the act is constitutional both in form and in application.

The restraining order is vacated and the writ quashed.

Mr. Justice Hilton, being incapacitated by illness, took no part.

Supreme Court of the United States

October Term, 1939.
No. 394

STATE OF MINNESOTA EX REL CHARLES EDWIN PEARSON,
Appellant,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. MICHAEL F. KINKEAD, JUDGE OF SAID PROBATE COURT OF RAMSEY COUNTY,
Respondents.

APPELLANT'S BRIEF.

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REFERENCE TO OFFICIAL REPORT.

The opinion of the Supreme Court of Minnesota is officially reported in 205 Minn. 545. It also appears in 287 N. W. 297.

CONCISE STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED.

This was an original proceeding in the Supreme Court of Minnesota. In his petition appellant directly attacked Chapter 369, Laws of 1939, as being unconstitutional because it denied to appellant due process of law and the equal protection of the laws and abridged the privileges and immunities of citizens of the United States, all in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. (Record, pp. 1, 2, f. 2, 3). These contentions were never waived or withdrawn. (Record, p. 15, f. 57).

The Supreme Court of Minnesota, by its decision and judgment having sustained the validity of the statute, appellant is given a direct right of appeal under Section 237 of the Judicial Code as amended. (U. S. C. A. Title 28, Section 344).

STATEMENT OF THE CASE.

On April 19, 1939, the Minnesota Legislature passed Chapter 369, Laws of 1939. It was approved April 21, 1939, and reads as follows:

CHAPTER 369—H. F. No. 1584.

A BILL.

FOR AN ACT relating to persons having a psychopatic personality.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. The term "psychopathic personality" as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons.

Sec. 2. Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively. Provided however, before such proceedings are instituted, the facts shall first be submitted to the county attorney, who, if he is satisfied that good cause exists therefor, shall prepare the petition to be executed by a person having knowledge of the facts, and shall file the same with the judge of the probate court of the county in which the "patient," as defined in such statutes, has his settlement or is present. The judge of probate shall set the matter down for hearing and for examination of the "patient." The judge may at his discretion exclude the general public from attendance at such hearing. The "patient" may be represented by counsel; and if the court determines that he is financially unable to obtain counsel, the court may appoint counsel for him. The "patient" shall be entitled to have subpoenas issued out of said court to compel the attendance of witnesses in his behalf. The court shall appoint two duly licensed doctors of medicine to assist in

the examination of the "patient." The proceedings had shall be reduced to writing and shall become part of the records of said court. From a finding made by such court of the existence of psychopathic personality, the "patient" may appeal to the district court upon compliance with the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 8992-166, 8992-167, 8992-169, 8992-170.

Sec. 3. The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure.

Sec. 4. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved April 21, 1939.

Proceedings under this act were instituted against appellant by the filing of a petition with the probate judge on April 28, 1939. A hearing upon such petition was set for May 5, 1939, at 2 o'clock P. M. (Record, p. 1, 3, f. 1, 5). The petition alleged that the petitioner believed that appellant was a psychopathic personality as defined in Chapter 369 "because of his emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, failure to appreciate the consequences of his acts as to render said Charles Edwin Pearson irresponsible for his conduct with respect to his sexual behavior." (Record, pp. 4, 5, f. 6.). A warrant was issued for appellant's arrest and was about to be served on the

morning of May 5, 1939. (Record, p. 1, f. 1.) On May 5, 1939, appellant filed in the Supreme Court of Minnesota his petition for a writ of prohibition. This petition appears in the printed record, pages 1 to 3. An order allowing the writ was made by the Supreme Court on May 5, 1939, (Record, p. 6, f. 8), and an alternative writ of prohibition requiring the Probate Court and the judge thereof to desist and refrain from further proceedings until the further order of the court, and to show cause why the restraint should not be made absolute, was issued on May 5, 1939. The alternative writ was duly served upon the Probate Court and the judge thereof. (R. pp. 6 to 8, f. 9 to 18.) There was a return to the alternative writ admitting the allegations of appellant's petition except that the return did not admit that the act was unconstitutional but, on the contrary, claimed that the proceedings were authorized under the act and that the Probate Court obtained jurisdiction by reason thereof. (Record pp. 8 to 10, f. 17 to 26.)

The questions presented were briefed and argued, and the court held the act constitutional in an opinion filed June 30, 1939. This opinion is set out in the printed record on pages 17 to 28. The great bulk of this opinion is taken up with a discussion of the sufficiency of the title of the act and a discussion of the jurisdiction of the Probate Court. The only federal question discussed in the opinion is the question of whether the act is so indefinite and uncertain as to be void, and in that discussion most of the points raised by appellant were passed over without comment. The latter portion of the opinion deals with the question of whether appellant was entitled to a jury trial, and the court held that the proceedings were

not of criminal character and consequently, that under the constitution and laws of Minnesota, there was no right to a jury trial. We assume that the court's decision upon that point is conclusive here.

Practically every point raised by the appellant and presented in this brief was disposed of by the brief statement at the close of the opinion, reading:

> "We conclude that the act is constitutional both in form and in application." (Record, p. 28.)

A petition for re-hearing was denied without additional opinion, and final judgment was entered quashing the writ of prohibition and vacating the restraining order on August 31, 1939. (Record, pp. 28, 29, f. 75).

Within the time allowed by law, appellant filed his petition for appeal and the Supreme Court entered an order allowing the appeal on September 6, 1939, (Record, pp. 12, 13 f. 29, 30) and this appeal was promptly and duly effected. On November 6, 1939, this court entered its order noting probable jurisdiction.

After the appeal was perfected, Judge Pearson was succeeded as Probate Judge by the Hon. Michael F. Kinkead who was substituted as respondent by order of this court entered Nov. 6, 1939.

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

Appellant relies upon and urges errors duly assigned by him as follows:

(1) The Supreme Court of Minnesota erred in holding that Chapter 369, Laws of 1939, was not repugnant to the Constitution of the United States, and in holding and deciding that it was not too vague, indefinite and uncertain to constitute due process of law within the meaning of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and erred in refusing to hold and decide that said Chapter 369 was too vague, indefinite and uncertain to constitute valid legislation under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(2) The Supreme Court of Minnesota erred in holding that said Chapter 369, Laws of 1939, did not deny appellant the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that said Chapter 369 violated the Fourteenth Amendment to the Constitution of the United States in that it is not made applicable to all of the class treated of, but on the contrary exempts many of said class from its provisions.

(3) The Supreme Court of Minnesota erred in holding that said Chapter 369, Laws of 1939, did not deny to appellant the due process of law that is guaranteed to him by Sec-

tion 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that said Chapter 369 contained no provisions safeguarding and protecting human rights and securing to appellant and others rights and liberties guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in refusing to hold and decide that said Chapter 369 was so arbitrary, unfair and wanting in reason as to violate established principles of private right and distributive justice that the Constitution of the United States, and particularly Section 1 of the Fourteenth Amendment thereof, was designed to secure to all.

(4) That said Chapter 369, Laws of 1939, is so arbitrary, unusual and cruel in its provisions, and so lacking in any provision for the protection of human rights and liberties as to offend the good sense of mankind and all the principles of right and justice and is void because repugnant to the due process of law guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States, and the Supreme Court of Minnesota erred in holding that it was not repugnant to the Fourteenth Amendment, and in refusing to hold that it was void because repugnant to the Fourteenth Amendment for the reasons here stated.

(5) The Supreme Court of Minnesota erred in holding and deciding that Chapter 369, Laws of 1939, did not abridge the privileges and immunities of citizens or of this appellant, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

SUMMARY OF THE ARGUMENT.

A brief summary of appellant's argument is as follows:

Chapter 369, Laws of 1939, is void because repugnant to the equal protection clause of Section 1 of the Fourteenth Amendment in that it does not embrace all members of the class that the act deals with.

Chapter 369 is void because repugnant to the due process clause of Section 1 of the Fourteenth Amendment, first, because it is too vague, uncertain and indefinite to constitute valid legislation and, second, because it is so arbitrary, unfair, oppressive, capricious and unreasonable and so lacking in any safeguards for the security of private rights as to be void.

Chapter 369 is also void because it abridges the privileges and immunities of citizens of the United States as set forth in the argument following.

ARGUMENT.

Legislative History of Chapter 369, Laws of 1939.

In Minnesota, courts take judicial notice of the journals of the legislature and of the legislative history of bills. *Dunnell's Minnesota Digest*, Section 8963.

Chapter 369 was introduced as House File No. 1584 on April 5, 1939. That it received scant consideration is shown by the fact that it was passed a few days later and sent to the Senate, where it was passed, after amendment, on April 18, 1939. The last day of the session was April 19, 1939.

When the act was introduced, the Journal of the House, on page 1477, gave its title as:

> "A bill for an act relating to persons having a psycopatric [sic] personality."

Its author, evidently entertaining a well-grounded fear that the bill was an open invitation to the modern equivalent of Salem witch hunts, added a proviso to section one reading:

> "provided, that political or religious belief or activity, racial origin, or behavior occurring in connection with a labor dispute or a strike shall not in any case be considered as a basis for a finding of psychopathic personality."

This proviso was dropped when the bill was amended in the Senate.

On the day that the bill was passed (Journal of Senate for April 18, 1939, page 68) the Senate frankly confessed its ignorance of the subject upon which it was legislating by adopting a resolution asking that a committee be appointed by the State Medical Association and the State Bar Association to make a study of psychopathic personalities and report in time for action at the 1941 legislative session.

A General Consideration of Psychopathic Personalities.

Chapter 369 is entitled: "An act relating to persons having a psychopathic personality." Before coming to the legal questions presented, and for the purpose of providing an appropriate background, it may be helpful to consider briefly the general subject of psychopathic per-

sonalities. The authorities differ as to the number of types of such psychopathic personalities but are all agreed that some of the types are capable of subdivision and this may account for the difference in the number of types listed in different works on the subject. Some authorities list five types of psychopathic personalities, others, seven; and still others up to twelve or more. Reference might be made to Sadler's "The Theory and Practice of Psychiatry," (1936), Strecker-Ebaugh's "Clinical Psychiatry (4th Ed.)" and Maloy's "Nervous and Mental Diseases."

One of the types of psychopathic personalities is the criminal type and this type falls naturally into two main classes. First, criminal psychopathics who are normal sexually but because of their irresponsible proclivities are prone to commit anti-social acts or crimes, and, second, criminal sexual psychopathics who are irresponsible sexually although they may be perfectly rational and well-balanced in every other respect.

In all types of psychopathic personalities the irresponsibility falls short of insanity or feeblemindedness. It is true that in some of the members of each type the disease or disorder may make such pronounced progress as to lead to insanity. In such cases those so afflicted step out of the psychopathic personality class into the class of the definitely insane, and become subject to the laws dealing with the insane.

Chapter 369 deals with sane, criminal, sexual psychopathics. In Section 1 the definition of "psychopathic personalities" is limited strictly to those persons who, because of the existence of one or more of four enumerated "conditions," are rendered irresponsible for their conduct

"with respect to sexual matters and thereby dangerous to other persons."

Generally recognized as the best work on sexual psychopathic personalities is Kraft-Ebing on "Psychopathia Sexualis." The text of this book to which we have access is the revised edition of the 12th German edition. Other works dealing with psychopathic personalities are Bloch's "The Sexual Life of our Time," and Huhner's "Disorders of the Sexual Function." Instructive articles in medical and legal journals are numerous. A report now on our desk lists 67 recent articles. Some of these are mentioned in the notes to the article on "Validity of Sex Offender Acts" in the February 1939 issue of the Michigan Law Review (Vol. 37, page 613) and the article on "Civil Commitment for Psychiatric Treatment" in the March 1939 issue of the Columbia Law Review (Vol. 39, page 535). Other articles not dealing solely with sexual psychopathics but throwing light on the whole problem are "Mental Abnormality in Relation to Crime" in the March-April 1939 issue of the American Journal of Medical Jurisprudence and "Psychopathic Personalities as a Household Problem" in the June 1938 issue of California and Western Medicine (Vol. 48, No. 6, page 421).

An examination of these authorities demonstrates:

1. That the sexual type of psychopathic personalities includes men afflicted with satyriasis, women afflicted with nymphomania, homosexuals, sadists, fetishists, sodomites, exhibitionists and many others.

2. That the "conditions" referred to in Section 1 of Chapter 369—"emotional instability," "impulsiveness of

behavior," "lack of customary standards of good judgment" and "failure to appreciate the consequences of his act"—are not *causes* of sexual irresponsibility but are merely symptoms or results of certain diseases or disorders.[1]

3. That the "conditions" referred to in this section 1 of the act are the symptoms commonly present in the case of psychopathic personalities other than those of the sexually irresponsible type. The sexually irresponsible type of psychopathic personalities usually present entirely different symptoms and results. In most of such cases the only symptom is an abnormal sexual appetite.

It is apparent, and the provisions of the act demonstrate, the the members of the legislature had little knowledge of psychopathic personalities at the time this act was passed. This is not said in criticism as psychiatrists themselves are still wandering in a fog. That the legislators frankly conceded their ignorance and need for information is shown by the Journal of the Senate for April 18, 1939, on page 68, where appears a resolution passed by the Senate asking that a committee be appointed by the Minnesota State Medical Association and the Minnesota State Bar Association "to make a study of the subject of psychopathic personalities" and report to the Governor and the Senate with their recommendations at the beginning of the legislative session in 1941.

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[1] In the act these so-called "conditions" are treated as causes as it provides that they are to be such as "to render" the persons to whom the act applies irresponsible sexually. Only those of the irresponsible sexually whose disorder is traceable to one or more of these conditions are embraced within the act. The fact is, as we point out later, that these "conditions" are not causes but merely symptoms or results of certain disorders.

The value of such a preliminary study and report by experts, as was contemplated by the above mentioned resolution, is apparent from a comparison of Chapter 369 with the Illinois act dealing with sexual psychopathics approved July 6th, 1938, and found in Jones Illinois Annotated Statutes, Section 37.665 (4). Before the Illinois legislature acted a committee of expert neurologists and psychiatrists was appointed by the Honorable Thomas J. Courtney, State's Attorney for Cook County. This committee made an exhaustive study of psychopathic personalities and filed a written report. That report supports in all things what we have said above. For instance, in opposition to the general impression that homosexuals are harmless, the committee, on page 4 of this report said:

> "When by mutual consent homosexual practices are indulged in privacy no injury to society may result, but if they are imposed upon children, exhibited, or lead to seduction, society is in danger."

That the symptoms enumerated in Section 1 of Chapter 369 as causes are not necessarily present in sexual psychopathics and that the only symptom in many of such cases is evidence of an abnormal sexual appetite is shown on page 10 of this report as follows:

> "The sexual psychopath is typically not feeble-minded, indeed, he may have outstanding intelligence, he is not, according to present conceptions, insane nor has he any other demonstrable neurologic and may not have other psychiatric disorder. What he has is an imperative uncontrollable drive towards abnormal sexual expression, *and this may be practically his only*

symptom. Aside from this symptom he may be capable and often succeeds in making a satisfactory and even superior social adjustment." (Italics ours.)

On page 16 this committee warned that:

"Great care must be exercised in formulating the legal definition so that it does not introduce a term leading to misinterpretation and confusion * * *."

For the purpose of discovery of the disorder and proper treatment thereafter the committee recommended (page 16) "Reference to a psychiatric clinic attached to a court," trial by jury and subsequent discharge upon cure based on the opinion of "a proper body of psychiatrists." The committee also recommended (page 17) that those afflicted be committed "to a proper psychopathic hospital or State institution."

The committee (pages 18-19) suggested that criminal psychopathics be divided into two classes and furnished a definition of both such classes and recommended the use of such definitions in any proposed legislation. The first definition embraced criminal psychopathics who were normal sexually. The second embraced sexual psychopathics and reads:

"All persons not insane or feebleminded suffering from a mental disorder, which has existed for many years or from childhood and which mental disorder is coupled with strong, vicious and criminal propensities toward the commission of sex offenses, and upon which criminal propensities punishment has had little or no deterrent effect, shall be deemed and are hereby declared to be criminal sex psychopaths."

An examination of section 1 of the Illinois Act of July 6, 1938, discloses that the legislature adopted, almost verbatim, the definition of sexual psychopaths recommended by the committee. It also made the act applicable to *all* of the class.

We are informed that this report has not been published. Copies of it may be obtained from the States' Attorney of Cook County, Chicago, Illinois.

The numerous reports and articles on the subject demonstrate quite clearly that there has been no recent increase in sex offenses and that, as stated in the article in 37 Mich. L. Rev. 613; "Any apparent increase may be explained by publicity." They also bring out the existing confusion on the subject amongst psychiatrists and others—a confusion that fully justifies the report of the Committee on Psychiatric Jurisprudence (a joint committee representing the American Bar Association, the American Medical Association, the American Psychiatric Association and the American Neurological Association) who reported to the American Bar Association at its 1938 meeting that:

> "It was thought premature to urge such a law until there is a more substantial agreement on the part of medical men and psychiatrists as to the definition of the term 'Psychopathic Personality.'"

The above quotation may be found in the October 1938 issue of the American Journal of Medical Jurisprudence.

Chapter 369 is Void Because it Denies the Equal Protection of the Laws Guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

We concede the right to classify and assume for present purposes that there is no objection to the classification adopted by the act, but, having adopted a classification, it is our contention that *all* persons within the class must be treated alike or the act is void as denying the equal protection of the laws guaranteed by the Fourteenth Amendment.

Mr. Cooley states that the constitution *requires*:

> "that *all* persons subject to such legislation shall be treated alike." (Italics ours.)
>
> *Cooley's Constitutional Limitations* (8th ed.) pages 824, 825.

In equally terse phrases Mr. Cooley states what the constitution *permits*:

> "It is not infringed by legislation which applies only to those persons falling within a specified class, *if it applies alike to all persons within such class.*" (Italics ours.)
>
> *Cooley's Constitutional Limitations,* (8th ed.) page 825.

That the act is an exercise of the police power and designed for the protection of the public makes no difference in the rules applicable. Such statutes, like all other statutes, are subject to the due process and equal protection clauses of the Fourteenth Amendment:

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431.

Atchison Co. v. Vosburg, 238 U. S. 56, 35 S. Ct. 675.

So. Ry Co. v. Virginia ex rel Shirley, 290 U. S. 190, 54 S. Ct. 148.

Panhandle Co. v. State Highway Com., 294 U. S. 613, 55 S. Ct. 563.

The classification adopted by Chapter 369 is set out in section one which reads as follows:

> "Section 1. Definition.—The term 'psychopathic personality' as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

Clearly the "class" dealt with by the act is composed of persons irresponsible for their conduct with respect to sexual matters and thereby dangerous to other persons. Equally clear is the fact that the act does not embrace *all* such irresponsible persons. By express provisions of the act only a *part* of the class of irresponsible persons dealt with are included. To include all of such class it was only necessary that the legislature make the act applicable to *all* such irresponsible persons. The act does not do that but on the contrary is made applicable to only those of the class whose condition of irresponsibility is directly traceable to certain enumerated conditions. Those conditions are "emotional instability," "impulsiveness of behavior," "lack

of customary standards of good judgment" and "failure to appreciate the consequences of his act." The act selects from the "irresponsible sexually" those, and those only, in which "the existence" "of *such* conditions" "or a combination of any *such* conditions" is such "*as to render*" the person irresponsible. Those whose irresponsibility sexually is traceable to *other,* rather than *such,* conditions are expressly excluded by the act, although members of the class dealt with.

The class dealt with is not composed of persons who are emotional, impulsive, lacking in good judgment or who fail to appreciate the consequences of their acts. Those qualities are mentioned for the purpose of limiting the number of the class of irresponsible persons to whom the act is to be applicable, by requiring proof, not alone of irresponsibility sexually, but proof also that such condition of irresponsibility is traceable directly to the existence of one or more of the qualities mentioned.

Conclusive proof that a person is irresponsible sexually and thereby dangerous to other persons makes out no case under the act. The proof must go further and show that such irresponsibility is due to one or more of the qualities mentioned. This demonstrates that the act does not embrace all of the class that it deals with. The provisions of the act would exclude from its operation most men suffering with satyriasis, most women afflicted with nymphomania, as well as most homosexuals, fetishists, exhibitionists, sadists and others. That even homosexuals may be dangerous is recognized. In an article on "Civil Commitment for Psychiatric Treatment" appearing in 39 Columbia Law Review 534, 538, the author says:

"* * * even the homosexual may be dangerous in that he may debauch the young or attack in jealousy."

As a matter of fact the act excludes most members of the class that it deals with for it would only be in a limited number of the class that the precedent causes listed in the act—emotional instability, impulsiveness, lack of good judgment, or failure to appreciate consequences—would be the *cause* of the irresponsibility. In the great bulk of the class, those conditions, if present, would be the *result* and not the cause of the irresponsibility. Under this act the conditions mentioned must be the *cause,* the act stating that it is to apply where "the existence in any person of *such* conditions of (instability, impulsiveness, etc.,) or a combination of *such* conditions *as to render* such person" irresponsible sexually. For instance, a woman afflicted with nymphomania might be mentally irresponsible sexually and thereby dangerous to other persons, and the *cause* of her condition be some disease of the clitoris. Here clearly none of the precedent conditions mentioned in the act could be such "as to render" her irresponsible, or account for her irresponsibility. Granting their existence in her, they would be (assuming a connection between such symptoms and her disorder) the *result* and not the *cause* of the irresponsibility—the cause being the disease mentioned. The same illustration holds good as to most men afflicted with satyriasis. All, however, come within the class dealt with. They might all be mentally irresponsible sexually, but the *cause* of their condition would not be any one or more of the precedent conditions specified. Such conditions, assuming a connection between them and the disorder, would only be the *results* of the cause. So far as

such precedent conditions are concerned the act by express provision makes them causes, and not results flowing from or symptoms due to other causes.[2]

Whatever the cause of their condition may be, those who are irresponsible sexually and thereby dangerous to others constitute one class. As to each member of that class the fact of danger to others is identical, though the type of danger may differ. Assuming a need for restraint that need is identical as to each member of the class, and the need of treatment is identical as to each member, although the type of treatment may differ. When the condition, danger, necessity for restraint and need of treatment is identical as to each member of the class there is no basis for a subdivision of the class based on difference in the treatment that psychiatrists might prescribe, or based on causes for the condition—both of which could only be determined after careful examination by a qualified psychiatrist. Five or ten months from now the medical profession will change their position, both as to causes and treatment, and any act based thereon would soon be obsolete.

In what we have said above, we are not suggesting *other* instances to which the act might be made applicable, but instances *in the same class.* To the legislature and to the public generally the *cause* of the irresponsibility is immaterial, and it is important to the psychiatrist only as influencing the method of treatment. The important thing,

[2]In the article dealing with sex offenders in connection with "Civil Commitment for Psychiatric Treatment," appearing in the March, 1939, issue of the Columbia Law Review (Vol. 37, page 534), the author states that characteristics; such as, "emotional instability, lack of response to social standards and general lack of control" are "universally accepted as symptomatic." In other words such characteristics are not causes which may render a person irresponsible, but symptoms from which deductions may be drawn as to causes.

the thing which justifies classification, is irresponsibility. The hundred and one things which may cause the irresponsibility, while important to psychiatrists in deciding on the method of treatment, are of no importance to others and form no basis for subdividing the class. Otherwise we might have a hundred laws based on different causes but all dealing with one class.

The court must take the act as it stands. As said by the court in *Alexander v. Minnis*, 129 Minn. 165:

> "judicial interpretation cannot be allowed to usurp the place of legislative enactment."

and in *Mayflower Farms v. Ten Eyck*, 297 U. S. 266, 56 S. Ct. 457, in holding void a statute of New York because it did not embrace within its provisions all independent dealers going into business after its passage, this court said that, in the absence of any showing justifying the exclusion:

> "we have no right to conjure up possible situations which might justify the discrimination. The classification is arbitrary and unreasonable and denies the appellant the equal protection of the law."

The choice of words or omission of words cannot be considered accidental or be disregarded. It is significant that in this act the legislature made "*all* laws" relating to insane persons applicable to persons irresponsible sexually, but omits "all" when it comes to describing the sexually irresponsible persons who are to come within the terms of the act. In *Williams v. United States*, 289 U. S. 553, 53 S. Ct. 751, this court said:

> "The use of the word 'all' in some cases, and its omission in others, cannot be regarded as accidental."

See also:

Wright v. United States, 302 U. S. 583, 58 S. Ct. 395.

Where a law is stringent in its provisions, as is the law under consideration, this court, in *Yu Cong Eng v. Trinidad,* 271 U. S. 500, 46 S. Ct. 619, said that it should not be treated as "a nose of wax, to be changed from that which the plain language imports" in order to save it. In other words if a law is not valid on its face, the courts cannot amend it.

The Minnesota decisions are unanimous in holding that all members of a class embraced in any act of the legislature must be treated alike or the act is void;

State v. Pocock, 161 Minn. 376.

Johnson v. St. Paul Co., 43 Minn. 222.

State v. Sheriff of Ramsey County, 48 Minn. 236.

State v. Luscher, 157 Minn. 192.

State ex rel. v. Wagener, 69 Minn. 206.

Mathison v. Mpls. St. Ry. Co., 126 Minn. 286.

On the question of the difference that will justify exclusion from a class, the Minnesota case of *State v. Pehrson,* 287 N. W. 313, decided July 7, 1939, is particularly enlightening. The act there involved was an ordinance of the City of Minneapolis which required peddlers of farm products to be licensed. It exempted those peddling the products of farms occupied and cultivated by them. It was claimed that the ordinance was void because it did not embrace *all* peddlers. The city urged that there was a difference sufficient to justify the exclusion because an amendment to the state constitution provided:

> "Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor."
> *Minn. Const.* Art. 1, Sec. 18.

The court held that the amendment to the constitution did not create a difference sufficient to justify the exclusion and that the ordinance was arbitrary, unreasonable and void because violating the equal protection clause of the Fourteenth Amendment, saying:

> "The decisions of this court which have been mentioned above are controlling precedents for the proposition that a distinction between those who grow and those who do not grow the product which they sell is, when the purpose of the ordinance is to regulate selling from house to house, unreasonable and arbitrary. No reasons have been advanced which would justify us in abandoning the holding of these early cases. Since the classification is unreasonable, the ordinance is violative of the 14th amendment to the federal constitution."

The decisions of this court are equally clear and emphatic in holding that any act of the legislature which does not embrace within its provisions all of the class dealt with is arbitrary and void because it denies the equal protection of the laws guaranteed by the Fourteenth Amendment. We cite a few of the cases:

Hartford Co. v. Harrison, 301 U. S. 459, 57 S. Ct. 838.

Gulf C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150, 17 S. Ct. 255.

Southern Ry. Co. v. Greene, 216 U. S. 400, 30 S. Ct. 287.

Royster Guano Co. v. Commonwealth of Virginia, 253 U. S. 412, 40 S. Ct. 560.

Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423.

Colgate v. Harvey, 296 U. S. 404, 56 S. Ct. 252.

Duncan v. Missouri, 152 U. S. 377, 14 S. Ct. 570.

Yick Wo. v. Hopkins, 118 U. S. 356.

The courts will indulge a presumption of good faith and knowledge on the part of legislatures of existing conditions, but to carry such presumptions too far "is to make the protecting clauses of the fourteenth amendment a mere rope of sand, in no manner restraining state action." The words just quoted are from the decision in *Gulf etc. Co. v. Ellis*, supra, where this court said:

> "No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

That the deviation from constitutional requirements might by some be considered slight is not sufficient to save the act. The motto of the courts is obsta principiis. As was said by this court in *Boyd v. United States*, 116 U. S. 616, 635, 6 S. Ct. 524, 535:

> "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rules that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens and against any

stealthy encroachments thereon. Their motto should be obsta principiis."

Those words are particularly applicable here if it should be argued that the act in question involves most of the class dealt with, and should therefore be upheld. Just how many irresponsibles are exempted by the express provisions of the act can never be known and is not important on the question of whether the act is constitutional, for, if there are *any* of the class that the act does not include, *however small in number*, then the act is void.[3] See on this point *Truax v. Corrigan*, 257 U. S. 312, 42 S. Ct. 124, where this is pointed out in these words:

> "Thus the guaranty was intended to secure equality of protection not only for *all* but against *all* similarly situated. Indeed, protection is not protection unless it does so. Immunity granted to a class *however limited*, having the effect to deprive another class *however limited*, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." (Italics ours.)

In *Louisville etc. Co. v. Coleman*, supra, this court said that "mere difference is not enough." There must be such a real and substantial difference as to clearly justify the exclusion of a part of the class dealt with. Here *all* of the class are alike in condition—irresponsible sexually—and

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[3]For the purpose of the argument we have assumed that some of the class dealt with are embraced within the provisions of the act, although it is difficult to conceive of symptoms rendering any one irresponsible. Irresponsibility is caused by mental or physical disorders. Symptoms of such disorders are important only in that they aid experts in determining causes.

they are all alike in harmful result—dangerous to other persons. The only difference between those embraced in the act and those excluded is as to the *cause* of the condition—something that is important only to the psychiatrist in treating each afflicted individual. The *cause* might result in 100 different methods of treatment in the case of 100 persons, but it would be ridiculous to say that such fact justified 100 separate acts of the legislature classifying irresponsibles according to the cause of their irresponsibility.

In practically all the cases in which this court has upheld laws against the objection that they were repugnant to the equal protection clause of the Fourteenth Amendment, examination will disclose that the laws embraced *all* of the class dealt with. In those few cases where a different view was taken it will be found that the decision is based upon a substantial difference which justified or compelled the distinction. Illustrative of this class of cases is *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 31 S. Ct. 337, which involved the constitutionality of a New York statute designed to safeguard natural mineral springs against waste and impairment. In the act a distinction was made between pumping from wells penetrating porous rock and pumping from wells which did not penetrate such rock. This distinction was based on *a substantial difference in harmful results* and the court held that such difference furnished a reasonable basis for the classification.

In the case at bar there is no difference, substantial or otherwise, between those included in the act and those excluded from it. Both the persons included and those excluded are "irresponsible sexually," so there is no difference in the condition of the members of the class that the act deals with. Neither is there any difference in harmful re-

sults, as both those included and those excluded are "dangerous to other persons." The sole and only difference between those included and those excluded is as to the cause of their condition, and that is something that only a psychiatrist would be interested in and could determine, and he would only be interested in such determination because it would aid him in treating the condition.

That the "class" dealt with in this act are the sexually irresponsible must be conceded. The lower court's opinion in several places so states. Equally obvious is the fact that some of the class dealt with are exempted from the provisions of the act. Under all the decisions this fact renders the act repugnant to the guarantee of the equal protection clause of the Fourteenth Amendment.

CHAPTER 369 IS VOID AS IT IS REPUGNANT TO THE DUE PROCESS OF LAW CLAUSE OF SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(a) *The Act is too Vague, Indefinite and Uncertain to Constitute Valid Legislation.*

Civil legislation comes within the rule that statutes violate the due process clause of the Fourteenth Amendment when they are so vague, indefinite and uncertain that men of common intelligence must guess at their meaning and differ as to their application.

A. B. Small Co. v. American Sugar Refining Co., 267 U. S. 233, 45 S. Ct. 295.

Cline v. Frink Dairy Co., 274 U. S. 445, 47 S. Ct. 681.

Parks v. Libbey-Owens Co., 360 Ill. 130, 195 N. E. 616, 21 Mich. Law Rev. 843.

The only difference in the application of the rule, as between civil and criminal legislation, is that criminal legislation is given closer scrutiny, as human liberties and reputations are involved. The reason for the closer scrutiny exists here, and Chapter 369 should receive the same careful examination that it would receive if it were definitely labeled as criminal legislation.

Under this act a warrant is issued and the accused arrested and placed in confinement exactly as in proceedings under a criminal statute. Under most criminal statutes the accused may be released on bail. This act is more stringent in that the accused has no such right. Under most criminal statutes the accused on a finding of guilt is subject to fine or imprisonment for a definite and frequently short term of days or years. Under this act upon conviction there can be no fine and no definite term short of a life sentence. The court is required to commit the accused for the rest of his life to an asylum for the dangerously insane.

A still stronger reason why this act should be subjected to even closer scrutiny than the ordinary criminal statute is the nature of the subject dealt with and the sinister danger to innocent persons through charges made by the hysterical, suspicious or evil-minded. The act, as it now stands, is an open invitation to blackmail. No conviction under this act is necessary to bankrupt a man's business, break up his home and subject him and his wife and children to humiliation, shame and disgrace. All that can be accomplished by the mere filing of charges.

Even a cursory reading of this chapter 369 will convince any impartial reader that men of common intelligence must guess at its meaning and differ as to its application. We will have as many differing guesses as there are county at-

torneys and probate judges, and it is not even required that those who guess be lawyers. Probate judges in Minnesota are not required to be learned in the law and many of them are not lawyers and have had no legal training.

What is meant by "dangerous" in section 1 of the act? Does it refer to physical injury or injury to the mind or morals? And when is any one dangerous? There are some in every community who consider every normal man sexually dangerous. Where is the line to be drawn and who is to draw it? There is no definite standard fixed in the act to insure that the rule to be applied will be the same in every county in the state. What is said here as to "dangerous" is equally true of the word "irresponsible." Section 3 of the act makes it clear that the word was not used as a synonym for insanity. If not insane, just who are "irresponsible?" The act furnishes no guide.

What is meant by "emotional instability?" Is the act so certain and definite that the same rule will be applied to all? The fact is that one who is looked upon by some as emotionally unstable is looked upon by others as stolid and unemotional. There is no uniformity of opinion on such matters and the act furnishes no rule or guide by which uniformity might be attained. Everyone is left free to guess, differ and err.

What is said above as to "emotional instability" is true of the phrase "impulsiveness of behavior." The act furnishes no rule, standard or guide, and there is no settled opinion upon the question of what constitutes impulsiveness of behavior. One whom the probate judge of Pine County might consider impulsive, the probate judge of St. Louis County might consider deliberate. The result would

be that, instead of having one statute applicable to all alike, we would have as many distinctly different statutes being enforced as there are probate judges.

And just when may a man be considered lacking in "customary standards of good judgment?" What are such customary standards? The act establishes no standard and there is no uniform standard throughout the state. Standards of good judgment differ every few miles in every direction. Even in the same city or village they may differ with each group therein and frequently with each individual in a group.

When we come to "failure to appreciate the consequences of his acts" we reach something that, in varying degree, we are all guilty of. Not being omnipotent we all frequently fail to realize the consequences of our acts. Just where is the dividing line to be drawn? The act furnishes no rule or standard by which this can be done.

This Chapter 369 falls within the class of legislation condemned in *Fairmount Creamery Co. v. Minnesota*, 274 U. S. 1, 47 S. Ct. 506, where the court quotes approvingly from *Tyson & Bro. v. Banton*, 273 U. S. 418, 47 S. Ct. 426, as follows:

> "It is not permissible to enact a law which, in effect, spreads an all-inclusive net for the feet of everybody, upon the chance that, while the innocent will surely be entangled in its meshes, some wrong-doers also may be caught."

The validity of the statute is to be determined from its face, without aid of charges filed thereunder. As tersely stated in *United States v. Capitol Co.*, 34 App. Cas. (D. C.) 592:

"The information cannot rise higher than its source,—the statute."

In *United States v. Ninety-nine Diamonds*, 139 Fed. 961, (C. C. A. 8th Cir.) 2 L. R. A. (N. S.) 185, Judge Sanborn, citing as authority therefor the opinion of Chief Justice Marshall in *United States v. Wiltberger*, 5 Wheat. 76, 96, 5 L. ed. 37, 42, said:

"It is the intention expressed in the statute, and that alone, to which the courts may give effect. They may not assume or presume purposes and intentions that the terms of the statute do not indicate, and then enact or expunge provisions to accomplish these supposed intentions."

The Supreme Court of Minnesota has spoken in equally emphatic terms. We quote from the opinion in *Alexander v. McInnis*, 129 Minn. 165, as follows:

"It is true, as stated in State v. Reussing, 110 Minn. 472, [illegible] N. W. 279, that a statute is not valid unless there is a competent expression of legislative will and that *judicial interpretation cannot be allowed to usurp the place of legislative enactment.*" (Italics ours.)

And it was so held by this court in *Lanzetta v. State*,—— U. S.——, 59 S. Ct. 618, where the court says:

"If *on its face* the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. Cf. United States v. Reese, 92 U. S. 214, 221, 23 L. ed. 563; Czarra v. Board of Medical Supervisors, 25 App. D. C. 443, 453. *It is the statute*, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. See Strom-

berg v. California, 283 U. S. 359, 368, 51 S. Ct. 532, 535, 75 L. Ed. 1117, 73 A. L. R. 1484; Lovell v. Griffin, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949." (Italics ours).

In this Lanzetta case this court held a New Jersey statute void as repugnant to the due process clause because too vague, indefinite and uncertain in that the statute itself did not contain any adequate definition of the words "gang" and "gangster," the court saying:

"No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. The applicable rule is stated in Connally v. General Const. Co. 269 U. S. 385, 391, 46 S. Ct. 126, 127, 70 L. Ed. 322:

"'That the term of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.'"

The above quotation clearly sets forth the requirements for valid legislation. Chapter 369 transgresses all of those requirements. Its terms are "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application" and for that reason it "violates the first essential of due process of law."

In *State v. Northwest Co.*, 203 Minn. 438, 281 N. W. 753, an act of the legislature required the "actual cost" of the transportation of farm products to be deducted from the purchase price. The court held that "actual cost" was a term "so vague, indefinite and uncertain as to deny due process of law."

In *State v. Parker*, 183 Minn. 588, an act was held void for uncertainty which used the words "lot" and "rear" in connection with the regulation of buildings.

In *Hafiz v. Midland Co.* (Minn.) 287 N. W. 677, the court said that the phrase, "good condition," was a "vague and indefinite phrase" "likely to be given various meanings."

In the following cases legislation was held void as too vague, indefinite and uncertain because of the words or phrases mentioned:

Current rate of per diem wages, Locality.

Connally v. General Construction Co. 296 U. S. 385, 46 S. Ct. 126.

Unjust or unreasonable.

U. S. v. L. Cohen Grocery Co., 255 U. S. 81, 41 S. Ct. 298.

Reasonable profit.

Cline v. Frink Dairy Co., 274 U. S. 445, 47 S. Ct. 681.

Waste.

Champlin Co. v. Corporation Commission, 286 U. S. 210, 52 S. Ct. 559.

Real value.

Collins v. Ky. 234 U. S. 634, 34 S. Ct. 924.

Market value under fair competition, and under normal market conditions.

International Harvester Co. v. Ky. 234 U. S. 216, 34 S. Ct. 853.

Customary street attire.

People v. O'Gorman, 274 N. Y. 284, 8 N. E. (2d) 862.

Disorderly. Unbecoming conduct.

Griffin v. Smith (Ga.) 193 S. E. 777.

"Loud," "ordinary," "usual," as applied to the human voice.

Ex parte Westellison, 38 Okla. Cr. 207, 259 Pac. 873.

"Narrow-tired" and "broad-tired" in an act dealing with the use of highways by wagons.

Cook v. State, 26 Ind. App. 278, 59 N. E. 489.

Aged.

Hallman v. State, 18 S. W. (2d) 652, 113 Tex. Cr. R. 100.

Reasonable effort.

Ex Parte Taft, 284 Mo. 531, 225 S. W. 457.

Reasonable variations.

U. S. v. Shreveport Co., 46 Fed. (2d) 354.

"Unsuitable" or "improper" scaffolding which will not give "proper protection."

Patten v. Aluminum Castings Co. (Ohio) 136 N. E. 426.

"Suitable provisions" to prevent injury.

Toledo Co. v. Snegowski, 103 Ohio St. 161, 136 N. E. 904.

Mob violence.

Augustine v. State, 41 Tex. Cr. R. 59.

Indecent assault.

State v. Comeaux, 131 La. 930.

Public indecency.

Jennings v. State, 16 Ind. 335.

Injurious to the public morals.

Ex Parte Jackson, 45 Ark. 158.

Inhabited portion of any residence district.

City of St. Paul v. Schleh, 101 Minn. 425.

Occupied mainly for residences.

Wasem v. City of Fargo (N. D.) 190 N. W. 546.

Speculative securities. Legitimate business. Ordinary Course. Gain or advantage.

Groskins v. State, 52 Okl. Cr. 197, 4 Pac. (2d) 117.

"Needlessly" killing an animal.

Canadr v. State, 108 Tex. Cr. R. 147, 300 S. W. 64.

Premises.

Smith v. State, 99 Tex. Cr. R. 114, 268 S. W. 742.

Usual transfer delivery zone.

Ex Parte Schmolke, 199 Cal. 42, 248 Pac. 244.

Liquor.

Ex Parte Bales, 42 Okl. Cr. 28, 274 Pac. 485.

Current rate of wages. Locality.

Christy-Dolph v. Gragg, 59 Fed. (2d) 766.

State v. Jay etc. Co., 39 Ariz. 45, 3 Pac (2d) 983.

The display of any flag, etc. "which is likely to provoke a riot or breach of the peace."

People v. Young, 136 Cal. App. 699, 29 Pac. (2d) 440.

Forbidding shipment of oranges "when frosted to the extent of endangering the reputation of the citrus industry."

Ex Parte Peppers, 209 Pac. 896.

Regular price.

Phillips v. State, 125 S. W. (2d) 585.

Reasonable variations.

Ex Parte Humphrey, 92 Tex. Cr. R. 501, 244 S. W. 822.

Substantially.

Cogdell v. State, 81 Tex. Cr. R. 66, 193 S. W. 675.

"Reasonable" as applied to "devices, means or methods."

Boshuizen v. Thompson Co., 360 Ill. 160, 195 N. E. 625.

Unjust and unreasonable.
R. R. Co. v. R. R. Com. 19 Fed. 679.

Undue preferences.
Tozer v. U. S. 52 Fed. 917.

An approved block system.
R. R. Com. of Ind. v. Grand Trunk Co., 179 Ind. 255.

A sufficient number.
Glendale Coal Co. v. Douglas, 137 N. E. 615.

Equal to or better in quality. Specifications.
Atlanta Refining Co. v. Trumbull, 43 Fed. (2d) 154.

Full report.
James v. City of Cleveland, 28 Ohio App. 178, 162 N. E. 617.

Unprofessional conduct.
Matthews v. Murphy, 23 Ky. L. Rep. 750.

Prevailing rate of wages in the locality.
People v. Coler, 166 N. Y. 1.

Grossly improbable statements.
Hewitt v. Board, 148 Cal. 590.

Drove or droves.
McConvill v. Mayor, 39 N. J. L. 38.

Gambling device.
State v. Mann, 2 Ore. 238.

Without "crowding."

U. S. v. Capitol Co., 34 App. Cas. (D. C.) 592.

Suspicious person.

Stoutenberg v. Frazier, 16 App. Cas. (D. C.) 229.

Unprofessional or dishonorable conduct.

Czarra v. Medical Supervisors, 25 App. Cas. (D. C.) 443.

Prevailing rate of wages.

Mayhew v. Nelson, 346 Ill. 381, 178 N. E. 921.

Reasonable and approved devices, means or methods.

Vallet v. Radium Dial Co., 360 Ill. 407.

Vagueness, indefiniteness and uncertainty is not confined to Section 1 of this Chapter 369. It permeates the entire act, even when read in the light of the decision of our Supreme Court upholding it. That this is true is perhaps best illustrated by an analysis of the act prepared after such decision, by a skilled attorney in the office of the county attorney in the largest county of this state. In this analysis, upon the question of when the act is applicable, he states:

> "The condition of emotional instability must exist by reason of a hereditary (inherited tendencies) and not acquired environmental conditions and manifested by an arrested development of the non-intellectual mental faculties, characterized by infantile reactions to adult situations; without inner emotional conflict, and without loss of contact with reality. Likewise, (b) conditions of impulsiveness of behavior, (c) lack of customary standards of good judgment; (d) failure

> to appreciate the consequences of his acts; and (e) a combination of such conditions must also be manifested with respect to sexual matters by reason of similar conditions. If these factors are not shown to exist, then a hearing under the law, in my opinion, is not warranted."

There are very few county attorneys or probate judges who would agree with the above assuming that it means anything or that they understood it if it had a meaning, and it illustrates perfectly the obvious fact that if this act is upheld we will have as many different acts applied and enforced as there are county attorneys and probate judges in the state.

The author calls attention to the fact that while the law requires the facts to be first submitted to the county attorney, there is no requirement for an investigation by him before the filing of the petition and that if there is such a duty in that respect, it is an inferential one only. He calls attention also to the fact that there is no provision as to the degree of proof required to convict. He thinks, however, that "a degree of proof beyond reasonable doubt" should be required "because man's liberty is at stake," adding:

> "This should be true regardless of the fact that the law does not classify a person having a psychopathic personality as a criminal. State ex rel Pearson, supra."

He thinks that the provision of the act making all laws relating to insane persons applicable to psychopathic personalities is limited "to commitment after adjudication and the treatment to be afforded," although the act expressly provides that all laws relating to the insane shall apply

even to persons who are only "alleged" to be psychopathic personalities. He is of the opinion that the act "does not require an overt act" which construction, in many counties, might lead to conviction upon suspicion. He also is of the opinion that under the law, during vacations or sickness of the probate judge, that court commissioners would have full power and authority to proceed, convict and commit, basing this opinion upon Mason's Supplement, 1938, section 8992-181, which provides:

> "*Commissioner may act.*—Whenever the probate judge is unable to act upon any petition for the commitment of any patient, the court commissioner may act in the place of such judge."

Of the section just quoted he says:

> "The Court Commissioner may act *in place of such judge.* If the Court Commissioner stands in the shoes of the Probate Judge, the fair inference would be that the legislature intended that he should have full authority and assume all the duties of a Probate Judge in respect to the particular case so assigned."

The author's position on this point is undoubtedly correct and it would follow that the question of whether a man should be committed for life to an asylum for the dangerously insane and his home and business be ruined, would in many cases be left in the hands of janitors, barbers, butchers, or other persons without legal training.

As a result of this study of the act and the decision of our Supreme Court upholding it, the author says:

> "The essential features of a psychopathic personality can now be summarized in an inclusive definition as follows:

"The psychopath is one whose personality shows a functional hereditary defect, partially modified by environmental conditions, manifested by an arrested development of the non-intellectual mental facilities, and characterized by infantile reactions to adult situations without inner emotional conflict and without loss of contact with reality.'"

How many county attorneys, probate judges or district courts on appeal will agree with that definition?

Notwithstanding the statement above that a definition can now be given, the author says:

"Practically every psychiatrist has his own idea of what constitutes a psychopathic personality;"

Under Chapter 369, the county attorney is made a grand jury of one. There is no requirement in the law that he investigate; there is no provision for a hearing before this grand jury of one of witnesses on behalf of the accused; unless the statute referred to in the next paragraph is applicable, there is no requirement in the act that the accused be represented by counsel.

Under the blanket incorporation into Chapter 369 of all laws dealing with the insane, there becomes a part of the act our statute which makes it the duty of the county attorney to appear on behalf of any person accused of insanity and take such action as may be necessary to protect his rights, Mason's Minnesota Statutes, Section 8957; 1938 Supplement, 8992-174. In other words, the person who has pre-judged the accused and prepared the petition against him is required to appear in his defense and protect his rights!

No one can know by reading this act who is to make the "finding" that the accused is or is not a psychopathic personality. In Section 2 there is a provision requiring the court to appoint two licensed doctors to assist in the examination. This is followed by a further provision that the proceedings shall be reduced to writing and that the patient may appeal from a finding made by the court of the existence of a psychopathic personality. This, when coupled with and read in the light of Sections 8958 and 8959, Mason's 1927 Statutes, which are made a part of the act by reference, makes it indefinite and uncertain as to just who is to make the finding of the existence of a psychopathic personality. Is it the probate judge, as might be inferred from Section 2, or is it the probate judge and the two licensed doctors, as provided by Sections 8958 and 8959? In those sections the two doctors and the probate judge are called a board of examiners, and Section 8959 provides:

> "When the examination is completed, *the board* shall determine whether or not the person examined is a feebleminded person, an inebriate or an insane person."

This is not changed by the 1935 Probate Code (Chapter 72, Laws 1935), Section 175 thereof providing: "The examiners and the court shall report their findings."

In addition to making all laws relating to the insane a part of the act, section 2 apparently adds a dash of the poor laws when it provides that the petition shall be filed with the probate court:

> "of the county in which the 'patient,' *as defined in such statutes*, has his settlement or is present."

What statutes are referred to in the above quotation? No one knows. Certainly not Chapter 369, although section one defines who are to be considered psychopathic personalities. The word "settlement" would indicate that the poor laws were to be considered, to some extent at least, a part of this act.

In conclusion under this head, we very earnestly insist that Chapter 369 is altogether too vague, indefinite and uncertain to constitute valid legislation. As said by Justice Cardozo, speaking for this court in the case of *Zellerbach Paper Co. v. Helvering*, 293 U. S. 172, 55 S. Ct. 127:

> "A statute of uncertain meaning will not readily be made an instrument for so much of hardship and confusion."

(b) *The Act is so Arbitrary, Unfair, Oppressive, Capricious and Unreasonable and so Lacking in Any Safeguards for the Security of Private Rights As to be Void.*

Minnesota, as is true of most of the states, has statutory provisions amply protecting the public from sex offenders and providing for their punishment. Mason's 1927 Minnesota Statutes, Sections 10124 to 10134, 10157, 10194 to 10208, 10534, 10186 to 10193. Minnesota also provides adequate protection against acts of the insane or feeble-minded by the provisions of the Probate Code, Chapter 72, Laws of 1935, sections 173 to 184. There is, therefore, no pressing need for legislation of the type here involved and there is no reason why the matter should not be dealt with after careful study and research.

Even though there were a pressing need for legislation of this type, that fact would not justify a lowering of con-

stitutional barriers and a curtailing of the rights of citizens. This very point was stressed by this court in the recent case of *DeJonge v. State of Oregon*, 299 U. S. 353, 57 S. Ct. 255, where the court held that the right of free speech and peaceable assembly could not be abridged without violating the fundamental principles of liberty and justice which lie at the base of all our political and civil institutions—"principles which the Fourteenth Amendment embodies in the general terms of its due process clause." The court referred to the asserted pressing need for action and held that the greater the importance of safeguarding the community, the more imperative it was that in doing so constitutional rights be preserved, saying:

> "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

And in Schlesinger v. State of Wisconsin, 270 U. S. 230, 46 S. Ct. 260, the court said:

> "Rights guaranteed by the federal Constitution are not to be so lightly treated; they are superior to this supposed necessity. The state is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever."

The danger of railroading the innocent to insane asylums has always existed and has been emphasized both in law

books and in fiction. This danger was referred to recently by John H. Wigmore, Dean Emeritus of Northwestern University Law School and former president of the American Institute of Criminal Law and Criminology, in his introduction to Maloy's Nervous and Mental Diseases. In this introduction he refers to fairly recent times when poor people could be spirited away to insane asylums and adds:

> "And even today, in most of our states, the testimony or certificate of any physician, not being a psychiatric expert, may suffice for committal to an institution."

This danger exists under Chapter 369, dealing as it does with the little known subject of psychopathic personalities, where the services of competent and qualified psychiatrists are called for, but entirely ignored—the act expressly providing only for the appointment of "licensed doctors" and not even requiring that they be in active practice.

There can be no question at this day that an act of the legislature, even when passed in the exercise of its police powers, may be so unreasonable and arbitrary as to violate the due process clause of the Fourteenth Amendment. This has been held to be true in rate cases, tax cases and other cases involving only money or property, as illustrated by *Smyth v. Ames*, 169 U. S. 466 and *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362, and certainly it must be true where the rights and liberties of citizens of the United States were involved. The necessity for such protection in the federal Constitution was recognized prior to the adoption of the Fourteenth Amendment. While that amendment was pending and before it had been adopted, John Norton Pomeroy in his work on Constitutional Law, (3rd Edition) Section 237, said of this proposed amendment:

"I consider this amendment to be by far more important than any which has been adopted since the organization of the government, except alone the one abolishing the institution of slavery. It would give the nation complete power to protect its citizens against local injustice and oppression; a power which it does not now adequately possess, but which, beyond all doubt, should be conferred upon it."

In a prior section of this work, Mr. Pomeroy showed how state courts might uphold oppressive state statutes as against the claim that they violated the due process clause of state constitutions. He then said:

"This is a result which is dismaying, and a remedy is needed. Such a remedy is easy, and the question of its adoption is now pending before the people."

In *Cooley's Constitutional Limitations* (8th Edition) page 1228, in speaking of the police power he says:

"It is a matter resting in the discretion of the legislature, and the courts will not interfere therewith *except where the regulations adopted are arbitrary, oppressive or unreasonable.*" (Italics ours.)

In *McGeehee Due Process of Law*, page 306, the author states:

"A general limitation on the exercise of the police power is found in the idea of reasonableness; that is, to be valid a statute must be reasonable and enacted in good faith; for every merely arbitrary and capricious fiat of the legislature is out of place in 'a government of laws and not of men,' and is irreconcilable with the conception of due process of law."

And on page 307 the same author says:

"Ultimately, then, reasonableness must be passed upon by the courts, in the exercise of keeping the legis-

lature within constitutional bounds, and reasonableness may in this sense, and in this sense only, be called a judicial question."

In the article on Constitutional Law in the recently published 16 C. J. S., Section 571, pages 1160-1163, the author discusses the guaranty of due process and the police power of the states as follows:

"Hence, while the guaranty does not interfere with the proper exercise of the police power, and does not prohibit governmental regulation for the public welfare, it of necessity giving way to reasonable police regulations protecting life and property, the due process clause does condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process, which demands that it be for a public purpose, that it be not unreasonable, arbitrary or capricious, which demands only that the law shall not be unreasonable, arbitrary, or capricious, or that the law shall not be unduly oppressive, and that the means selected shall have a real substantial relation to the object sought to be attained."

Statutes involving liberty are subjected to stricter tests than are taxing statutes involving only property. See *Hagar v. Reclamation District*, 111 U. S. 701, 4 S. Ct. 663. Even so, statutes exercising the power of taxation or the power of eminent domain are void as violating the due process of law clause "if found to be arbitrary, oppressive and unjust." *Lent v. Tillson*, 140 U. S. 316, 11 S. Ct. 825.

To be valid under the due process clause an act of the legislature must square with "the established principles of private rights and distributive justice." As said in *Scott v. McNeal*, 154 U. S. 34, 14 S. Ct. 1108:

"The fourteenth article of amendment of the constitution of the United States, after other provisions which do not touch this case, ordains: 'Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through the legislative, its executive, or its judicial authorities. Virginia v. Rives, 100 U. S. 313, 318, 319; Ex Parte Virginia, Id. 339, 346, Neal v. Delaware, 103 U. S. 370, 397. And the first one, as said by Chief Justice Waite in U. S. v. Cruikshank, 92 U. S. 542, 554, repeating the words of Mr. Justice Johnson in Bank v. Okely, 4 Wheat. 235, 244, was intended 'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.'"

In *Old Dearborn D. Co. v. Seagram-Distillers Corp.*, 299 U. S. 183, 57 S. Ct. 139, an act of the Illinois legislature was held valid, but the court recognizes that an act of the legislature may result "in a denial of due process" if it is "arbitrary, unfair or wanting in reason."

In Burdick's Law of the American Constitution, Section 266, citing and quoting from *Hurtado v. California*, 110 U. S. 515, 535, the author points out that the police powers of the states must be exercised within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and in the recent case of *Treigle v. Acme Homestead Assn.*, 297 U. S. 189, 57 S. Ct. 408, this court said that the means adopted under the police power must be reasonably adapted to the accomplishment of the end desired "and must not be arbitrary or oppressive."

The rules above referred to are the rules applied by the Supreme Court of Minnesota, as appears from In Re Delinquent Taxes in Polk County, 147 Minn. 344, where the court said:

> "A legislative act may be so arbitrary and oppressive and such an abuse of legislative discretion as to be constitutionally invalid."

Justice Brandeis, in his concurring opinion in *Whitney v. California*, 274 U. S. 357, 47 S. Ct. 641, after stating that it was settled that the due process clause applies to matters of substantive law as well as to matters of procedure, added:

> "Thus all fundamental rights comprised within the term liberty are protected by the federal Constitution from invasion by the states."

Supporting the above authorities, see also:

Southwestern Co. v. Danaher, 238 U. S. 482, 35 S. Ct. 886;

Powell v. Alabama, 287 U. S. 45, 53 S. Ct. 55;

Herndon v. Lowry, 301 U. S. 242, 57 S. Ct. 732;

Twining v. New Jersey, 211 U. S. 78, 29 S. Ct. 14;

Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064.

Whenever rights under the Constitution of the United States are involved, this court, while giving the opinion of the state court "the respectful consideration to which it is entitled" decides for itself the true construction of the statute. As said by this court in *Scott v. McNeal*, supra:

> "In every such case, this court must decide for itself the true construction of the statute."

See also as supporting the above:

Huntington v. Attrill, 146 U. S. 657, 13 S. Ct. 224;

Mobile & O. R. Co. v. Tennessee, 153 U. S. 486, 14 S. Ct. 968;

Kansas City Co. v. Botkin, 240 U. S. 227, 36 S. Ct. 261;

McGeehee on Due Process of Law, page 37.

And where rights under the Constitution of the United States are claimed, the right of review by this court cannot be avoided by the state court ignoring the claims or basing its decision on non-federal grounds.

Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655;

Ward v. Love County, 253 U. S. 17, 22, 40 S. Ct. 419.

In such cases this court has held that the enforcing of the statute against the objection that it was void under the federal Constitution necessarily affirmed its validity and hence that the judgment of the state court was reviewable under Section 237 of the Judicial Code.

In *Michigan Central Co. v. Mix*, 278 U. S. 492, 49 S. Ct. 207, it was held that denial of a writ of prohibition without any opinion by the highest court of the state was a final decision reviewable by this court.

Construction may not be substituted for legislation, and it is not within the judicial province to read out of the statute the requirement of its words.

United States v. Mo. Pac. Ry. Co., 278 U. S. 269, 49 S. Ct. 133;

Lake Co. v. Rollins, 130 U. S. 662, 670, 9 S. Ct. 651;

Caminetti v. United States, 242 U. S. 470, 37 S. Ct. 192;

Ex Parte Public Nat. Bk., 278 U. S. 101, 49 S. Ct. 43;
United States v. Felt & Tarrant Mfg. Co., 283 U. S. 269, 51 S. Ct. 376;
Rand v. United States, 249 U. S. 503, 510, 39 S. Ct. 359;
Rock Island Co. v. United States, 254 U. S. 141, 143, 41 S. Ct. 55, 56.

The act must stand exactly as written. Explanatory words or words of limitation cannot be supplied by the courts. As said in *United States v. Reese*, 92 U. S. 214:

> "The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.
>
> "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government. The courts enforce the legislative will when ascertained, if within the constitutional grant of power. Within its legitimate sphere, Congress is supreme, and beyond the control of the courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings must, annul its encroachments upon the reserved power of the States and the people.
>
> "To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty."

Our research discloses that this Chapter 369 is rare in legislative history. Apparently there have been only two

other acts passed dealing with this problem of sexual psychopathics. The first was Act No. 196 of the Public Acts of 1937 of the Michigan Legislature. This Michigan act was a much saner piece of legislation than Chapter 369. It differed from our act, for instance, in that after the original investigation and commitment for hospitalization, it *required* a re-examination every year into the question of irresponsibility, the provision of the act in that respect being as follows:

> "Provided, however, that such examination, investigation and hearing shall be held at least once every year by the court unless waived by such person in open court."

A proceeding was instituted under this Michigan law and the trial court held it unconstitutional and refused to act under its provisions. The Supreme Court affirmed the action of the trial court in the case of *People v. Frontczak*, 286 Mich. 51, 281 N. W. 534. The ground for the affirmance sufficiently appears from that portion of the opinion quoted below:

> "For an overt act offense the accused has a right to trial by jury of the vicinage, while under this act, for no statutory offense, he is to be tried by a jury of another vicinage, possibly far removed from his former domicile and friends and, if penniless and friendless, and the procedure is not under the criminal code he cannot obtain counsel or have witnesses at public expense. If the procedure is not under the criminal code, then the enactment is no amendment or addition to that code and a mere estray and a nullity. We must class it where we find it placed by its authors, and we find it in the mentioned criminal code chapter relating to judgments and sentences in criminal cases."

"Hospitalization, with curative treatment and measures may be desirable but, until the law makes a sane person amenable to compulsory restraint as a sex deviator, it falls short of due process in merely providing procedure.

"Under this act defendant is under sentence for an overt sex deviation offense and, as a potential like offender, it is sought to keep him in confinement under exercise of the police power. The police power, under such circumstances, is not a civil proceeding comparable to that in cases of insane persons."

On July 6th, 1938, there was approved an act, passed by the Illinois legislature, dealing with criminal, sexual psychopathic persons. It will be found in Jones Illinois Annotated Statutes, Section 37.665 (4). Before the Illinois legislature acted, it had the advice and recommendation of a committee of expert neurologists and psychiatrists appointed by the State's Attorney for Cook County. So far as we know, the validity of this Illinois act has not yet been passed upon. We are informed that there have been no proceedings thereunder, and we are advised by the Attorney General of the State of Illinois that he has never been asked for an opinion upon the act or any phase thereof. The only written reference to this Illinois act that we have found is in an article entitled "Concerning Proposed Legislation for the Commitment of Sex Offenders," appearing in Volume III, John Marshall Law Quarterly 407. The author of this article is William Scott Stewart, at one time connected with the State's Attorney's office of Cook County. In this article he says: "In the matter of the bill under consideration, the proposed remedy would seem worse than the disease," and he expressed the opinion

that the act was void because it violated the due process and equal protection clauses of the constitution, adding:

> "The practical results of the proposed legislation would be to give the prosecution power to lock up any person on suspicion, and the subsequent proceedings would not be what is regarded as a trial but rather an ex parte investigation. As was said in People v. Varcaha, 'the law seeks no unfair advantage over an accused person but is watchful to see that proceedings in which his life or liberty is at stake shall be fairly and impartially conducted.'"

A comparison of this Illinois act and Chapter 369 might be useful:

The Minnesota Act	The Illinois Act
No classification.	Classified under the heading: "Criminal Code," with a subheading: "Commitment and Detention of Sexual Criminals."
The title is:	The title is:
"An act relating to persons having a psychopathic personality." This gives no information whatever as to what class will be dealt with in the body of the act. When this act was introduced not one man in a million could have stated what the body of the act would deal with. Whoever ventured an opinion would have been guessing.	"An act to provide for the commitment and detention of criminal sexual psychopathic persons." This gives considerable information.
Embraces only such persons whose disorder could be traced to a few harmless qualities, common to most men, enumerated in section 1. All others are exempt.	Embraces all persons suffering with the disorder dealt with.
No limit.	The disorder must have existed one year.
No such provision.	Persons must first have been charged with crime.

No such provision. All the court need do is to appoint two "licensed doctors."	The court is required to appoint two qualified psychiatrists to make examination.
No requirement. Anyone holding a license is qualified. That he has had no experience and, in fact, has no qualifications to pass on such matters is no bar. The men appointed may never have heard of a psychopathic personality.	To qualify as a competent psychiatrist, a doctor must be: "A reputable physician licensed to practice in Illinois and who has exclusively limited his professional practice to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years."
No provision for jury trial. Under Mason's 1927 Minnesota Statutes, Sec. 8959 (made a part of the act by reference) if the two doctors (who are not required to know anything about psychopathic personalities) determine that the accused is "dangerous," the court "shall" commit him for life to an insane asylum for the dangerously insane.	A jury "shall be impaneled" to ascertain the ultimate fact in issue.
No provision in the act for commitment to a psychiatric hospital. Commitment is to an insane asylum for the "dangerous insane." Section 8959 Mason's Statutes 1927.	Commitment is to a hospital staffed to adequately treat the disorder.
Commitment is for life. Sec. 8959 Mason's Statutes, 1927.	Commitment is "until recovery."
Authorizes private hearings.	The act contemplates a public hearing before a jury.

The above should be sufficient to demonstrate that, both by what it omits as by what it includes, this Chapter 369 is a legal monstrosity.

Section 2 of Chapter 369 provides that "*all* laws now in force or hereafter enacted relating to insane persons" shall apply "with like force and effect" to persons "having a psychopathic personality", and, also, "to persons *alleged* to have such personality." There is no limitation to procedural matters. Under Section 8959 Mason's 1927 Minnesota Statutes, made a part of Chapter 369 by reference, the Probate Judge and two doctors constitute the board

of examiners. It is not required that any of them know anything about psychopathic personalities. If they determine that the accused is "dangerous to the public", then he "*shall* be committed" to an asylum "for the dangerous insane" for the rest of his life, unless a new board should later find him no longer dangerous. There is no requirement for an examination by a new board at any stated period, and in case anyone was interested enough in the unfortunate to compel such an examination, there is no requirement that this new board should know anything about psychopathic personalities. The phrase in Section 8959 "dangerous to the public" does not differ in any way from the phrase "dangerous to other persons" closing Section 1 of Chapter 369. So far as the accused is concerned, it is perfectly obvious that "the public" are "other persons." Under the provisions of this Chapter 369 a perfectly sane man can be committed for life:

(1) To a lunatic asylum for the "dangerous insane."

(2) As a result of a private hearing.

(3) Without benefit of counsel.

(4) In a county remote from his residence.

(Section 2 authorizes a trial in any county in which the accused "is present".)

(5) Without benefit of a jury trial.

(6) Without the presence of witnesses on his behalf.

(The act, it is true, provides for the issuance of subpoenas, but it makes no provision for the service thereof, or for the payment of witness fees and mileage. Of course, if this were a criminal proceeding, then the accused would be entitled to "compulsory" process for obtaining witnesses without the payment of witness fees or mileage. Const. of

Minn. Art. 1, section 6, section 7017 Mason's 1927 Minn. Statutes. In its opinion the Supreme Court has held that proceedings under this act are not criminal proceedings, so that there is no applicable provision of law for compulsory process or for the payment of witness fees or mileage.)

(7) On examination by two doctors who have no knowledge whatever of psychopathic personalities and who may never have heard the term used. It is not even required that they be in active practice.

(8) Without specialized care at the hands of qualified psychiatrists.

In Minnesota those under guardianship and those who may be non compos mentis or insane are disqualified as voters at any election whether state or national. Minnesota Constitution, Art. 7, Section 2. Insane persons are prohibited from marrying. Mason's 1927 Statutes, Section 8564. They are not competent as witnesses. Mason's 1927 Statutes, Sections 9814, 9819. They are disqualified to sit as grand jurors. Mason's 1927 Statutes, Section 10605. They are disqualified as petit jurors. Mason's 1927 Statutes, Section 9459. Incurable insanity is one of the grounds for divorce. Mason's 1938 Supplement, Section 8585. The insane are incompetent to make wills. Probate Code, Chapter 72, Laws of 1935, Section 34. Insanity is a ground for dissolution of a partnership. Mason's 1927 Statutes, Section 7415. Insane persons are rendered incompetent to sue or to be sued in their own names. Mason's 1927 Statutes, Section 8937. They are practically deprived of the right to contract as their contracts are voidable and people, because of that fact, will not contract with them. Dun-

nell's Digest, Section 4519. When under guardianship insane persons may be removed out of the state by the guardian.

Section 2 of this Chapter 369 provides that:

> "Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons *alleged* to have such personality, and to persons found to have such personality, respectively."

From this section 2 it is evident that all the disabilities above outlined are imposed upon psychopathic personalities and even upon those who are merely "alleged" to have such a personality.

From a finding "of the existence of psychopathic personality", section 3 of the act authorizes an appeal to the district court upon compliance with the provisions of Sections 8992-166, 8992-167, 8992-169 and 8992-170 of Mason's 1938 Supplement to the Statutes. Under these sections the accused is required to pay an appeal fee of three dollars to the probate court "to apply on the fee for the return", and file a bond "in such amount" as the probate court may direct to cover all costs and disbursements. After this and "upon payment of the remainder of its fee, if any" the probate court returns to the district court a certified transcript of the judgment appealed from. Section 8992-168 providing that an appeal shall operate to suspend the judgment is eliminated by Chapter 369. There is no provision for bail, and except as to appeals from "the allowance or disallowance of a claim" there is no right to a jury trial. The accused lies in jail until his case is tried. The right to a

jury trial is granted to one who has a claim of $10.00 for fish sold but denied to one whose liberty is at stake. So far as the poor are concerned, the effect of the act is to deny an appeal.

Without further analysis the above should be sufficient to demonstrate that Chapter 369 is too arbitrary, oppressive and unreasonable to constitute valid legislation.

CHAPTER 369 IS VOID AS IT ABRIDGES PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES.

The privileges and immunities clause of the Fourteenth Amendment protects the right of citizens of the United States to vote for national officers; to engage "in lawful commerce, trade or business"; to acquire and contract with relation to property real or personal and to maintain actions. The right to maintain actions, by necessary implication, would embrace the right to testify in support of such actions. All these rights, as shown elsewhere in this brief, are violated by Chapter 369 and the act is void for that reason.

Ward v. Maryland, 12 Wall. 418, 430;
Ex Parte Yarbrough, 110 U. S. 651, 4 S. Ct. 152;
Wiley v. Sinkler, 179 U. S. 58, 21 S. Ct. 17;
Colgate v. Harvey, 296 U. S. 404, 56 S. Ct. 252.

That appellant is a citizen of the state that passed the act does not remove him from the protection of this clause of the Fourteenth Amendment. As said by this court in *Colgate v. Harvey*, supra:

"The result is that whatever latitude may be thought to exist in respect of state power under the Fourth Article, a state cannot, under the Fourteenth Amendment, abridge the privileges of a citizen of the United States, albeit he is at the same time a resident of the state which undertakes to do so. This is pointed out by Mr. Justice Bradley in the Slaughter House Case, Fed. Cas. No. 8,408, 1 Woods 21, 28:

'The 'privileges and immunities' secured by the original constitution, were only such as each state gave to its own citizens. Each was prohibited from discriminating in favor of its own citizens, and against the citizens of other states.

'But the fourteenth amendment prohibits any state from abridging the privileges or immunities of the citizens of the United States, whether its own citizens or any others. It not merely requires equality of privileges; but it demands that the privileges and immunities of all citizens shall be absolutely unabridged, unimpaired.'"

CONCLUSION.

Chapter 369 clearly violates every guaranty of Section 1 of the Fourteenth Amendment and should be adjudged void.

Respectfully submitted,

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Supreme Court of the United States

October Term, 1939
No. 394

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Appellant,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HON. MICHAEL F. KINKEAD, JUDGE OF SAID PROBATE COURT OF RAMSEY COUNTY,
Respondents.

APPELLANT'S REPLY BRIEF.

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Review Publishing Co., 141 E. Fifth St., St. Paul, Minn.

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Certain Corrections as to Statutes Printed or Referred to by Appellee.

In an appendix to his brief, appellee, on page 54, prints Section 8992-174, Mason's 1938 Supplement, as being a part of the Minnesota statutes dealing with the insane. The life of that section ended on April 15, 1939, when it was superseded by Section 10 of Chapter 270, Laws of 1939.

On pages 4 and 5 of appellee's brief, it is stated that Chapter 369 adopts "Sections 8992-164 (14) to 8992-171, inclusive, covering appeals;". The statement is inaccurate. The question of appeals is covered by the last sentence in Section 2 of the act and the sections of Mason's 1938 Supplement there specifically adopted are: "Sections 8992-166, 8992-167, 8992-169, 8992-170."

It will be noticed that Sections 8992-164, 8992-165, 8992-168 and 8992-171, all of which are included in appellee's statement of existing law, are expressly excluded by the act itself. This is of some importance as the excluded Section 8992-168 provides that:

> 'Such appeal shall suspend the operation of the order, judgment or decree appealed from until the appeal is determined or the District Court shall otherwise order."

This Section 8992-168 does not necessarily require a release of the accused in case of an appeal, but by arbitrarily inserting it in Chapter 369, appellee seeks to find support for an assumption that such appeal would entitle the accused to his release pending the result of the appeal. As that section is not included in the act there can be no doubt about the correctness of our statement that the accused must lie in jail pending his appeal notwithstanding the fact that he has given the bond required by Section 8992-166 as amended.

In the appendix to his brief on page 60, appellee prints as a part of the statutes dealing with the insane, Section 8992-143, Mason's 1938 Supplement. This section is no longer in existence, it having been superseded by Section 8 of Chapter 270, Laws of 1939.

As to the Committee Report Made to the Governor.

Reference to this report is made in appellee's brief on pages 20 to 23. We have a copy of that report. It shows that it was prepared hurriedly and without proper study. Most of the recommendations made by the committee were ignored.

The second paragraph of the report shows that at this time many aspects of the problem presented by psychopathics are "necessarily vague and uncertain." The committee recommended several changes in the Probate Code, none of which were followed. Because of the lack of time, the committee reported that it had "been unable to do the necessary legal research to determine whether other sections need similar change."

The committee recognized that the problem under consideration was one surrounded by an atmosphere of vagueness and uncertainty and that any rational program would call for additional facilities and new types of institutional treatment. It added: "That, however, is a matter which the Committee does not feel competent to discuss at the present time", and it recommended the appointment of an Interim Committee of the Legislature to: "Arrange for, supervise, or direct a more comprehensive study of the legal, medical and administrative aspects of the whole problem." It further suggested that this Interim Committee cooperate with committees from the various bar associations, medical associations and the National Committee on Mental Hygiene, and report to the next legislature. It recognized the lack of present facilities for treatment and suggested a need for more specialized forms of treatment, adding:

"This may involve the preparation of cost data on a new type of institution for the care of the dangerously defective and psychopathic."

It also suggested:

"The desirability of modification of present laws relating to sterilization to permit greater experimentation with this operation as a form of treatment."

The report then referred to a statement attached thereto prepared by Dr. J. C. McKinley of the University of Minnesota.

Dr. McKinley's letter, dated March 20, 1939, discloses in the opening paragraph that it was a hurried document prepared without proper study and preparation. This appears from the following sentence in the opening paragraph of his letter:

"The time for preparation has been so short that my words make no pretense of being scholarly or complete, and the Committee has had no opportunity to edit the statement."

Later in the same paragraph he said:

"These are largely my own random thoughts which are necessarily tentative and subject to revision and expansion on more leisurely consideration and more searching study."

It is significant that the committee recognized that the employment in psychopathic cases of "licensed doctors" (unless they be active and qualified psychiatrists) is a travesty on justice. It recommended that the Interim Committee devote time to:

"Consideration of the whole question of how best to provide adequate psychiatric service to the courts."

Under Chapter 369 a Man Can be Sent to the Insane Asylum For Life Without His Case Having Been Considered by Anyone Learned in the Law or by Any Doctor Learned in Sexual or Mental and Nervous Cases.

Except as provided otherwise in the Constitution itself, Section 7 of Article 7 of the Constitution of Minnesota, makes every person entitled to vote eligible to any elective office, provided he has lived in the election district for thirty days prior to the election. The only provision otherwise is Section 6 of Article 6 which provides that judges of the Supreme and District courts "shall be men learned in the law."

The county attorney to whom the facts are first submitted and who prepares the petition is not necessarily an attorney and does not even have to be learned in the law. He may be a popular barber. It was so held in State v. Clough, 23 Minn. 17—the ruling being forced by Section 7 of Article 7 of the Minnesota Constitution.

The office of Probate Judge, being an elective office, is usually held in Minnesota by men who are not learned in the law and who have never been licensed to practice law. The Honorable Albin S. Pearson, who was Probate Judge of Ramsey County at the time this proceeding was instituted and the original respondent in this action, informs the writer that in November 1934 of the 87 probate judges in Minnesota 60 were not licensed attorneys. Judge Pearson further stated that the percentage of laymen holding office as judge has since increased. This will continue to be true so long as Section 7 of Article 7 remains unchanged in our constitution.

Court commissioners, who are authorized to act in place of the probate judge under certain circumstances, need not be learned in the law or licensed to practice law. A few years ago the legislature attempted to remedy this but the provision in the act requiring court commissioners to be learned in the law was held unconstitutional and void in State v. Reis, 168 Minn. 11. We know of no court commissioners who are lawyers.

The two doctors who are appointed to take part in the examination of the accused are not required to have had any experience in mental, sexual or nervous cases and are not even required to be in active practice. It therefore follows that the accused, under Chapter 369, may be committed to an insane asylum upon the certificate or testimony of doctors not qualified to recognize a psychopathic personality even if they lived with one so afflicted.

As the county attorney may be a barber, the probate judge a real estate man, the court commissioner a butcher, one of the licensed doctors a bone specialist and the other an oculist, it is apparent that one accused under Chapter 369 could take his journey to an insane asylum without having met on his way anyone learned in the law, or anyone having any knowledge of psychopathic personalities.

That commitment is for life is admitted on page 27 of appellee's brief where it is stated: "the commitment is without term."

As bearing on the above situation, and in addition to the authorities cited in our original brief, we quote from two other authorities:

> "The question is not what is actually being done under a statute that determines its constitutionality,

but what may be done under and by virtue of its provisions."

Minneapolis Brewing Co. v. McGillevray, 104 Fed. 258.

"The constitutionality of a law is determined, not alone by what has been done, but by what may be done, under its provisions."

Watertown v. Christnacht, 39 S. D. 290, 164 N. W. 62.

The unique and disgraceful situation above demonstrated could readily have been avoided by requiring the petition to be filed with the District Court and by requiring the court to appoint qualified psychiatrists in active practice to take part in the examination.

There is no Provision for the Release of Persons Adjudicated Irresponsible Under Chapter 369 and There is no Statute Expressly Authorizing a Re-examination of the Original Issue.

On page 61 of his brief, appellee prints Sections 4523 and 4524 of Mason's 1927 Statutes. These sections are found in Chapter 25 dealing with the Board of Control and are printed for the purpose of suggesting that one adjudged a psychopathic personality under Chapter 369 could be released at any time by the superintendent of the insane asylum to which he had been committed. This view is emphasized in appellee's brief on page 27 where reference is made also to Mason's 1938 Supplement, Sections 8992-179 and 8992-180. In Sections 4523 and 4524 there is no provision for approval of the release by any court.

Bearing in mind that an adjudication under Chapter 369 establishes the accused as "dangerous to other persons," Sections 4523 and 4524 pass out of the picture entirely. This necessarily follows as Mason's 1938 Supplement, Section 8992-180 (appellee's brief pages 58, 59) forbids the release by the Board of Control "or any institution" of anyone "found by the committing court to be dangerous to the public" unless such release be authorized by an "order of a court of competent jurisdiction."

Section 8992-179, Mason's 1938 Supplement, deals with the release by the Board of Control of the insane, feebleminded, inebriate or epileptic under certain conditions. That power, however, is expressly limited by Section 8992-180, which forbids its exercise in the case of anyone "found' by the committing court to be dangerous to the public."

It is perfectly obvious that there is no provision for release because of the fact that adjudication under Chapter 369 necessarily embodies a finding that the individual in question is "dangerous to other persons."

Is there any provision authorizing a re-examination of the original issue and the entry of an order analagous to that restoring an insane person to capacity? In our original brief (page 57) we assumed that release might be secured later if a new board of examiners found the person no longer dangerous. Such a new board was provided for in Section 8959, Mason's 1927 Statutes. Appellee, however, calls attention to the fact that this Section 8959 was expressly repealed at the time of the doption of the Probate Code—Chapter 72, Laws 1935. He is correct, and if there is any provision of law for a re-examination of the original issue, it must be found in Section 8 of Chapter 270,

Laws of 1939, which supersedes Section 8992-143, Mason's 1938 Supplement, printed in appellee's brief on page 60. It is extremely doubtful whether that section is applicable for reasons now to be mentioned.

On its face the section is explicitly limited to persons who have "been adjudicated insane or inebriate" and to persons under guardianship. To be applicable the provision just quoted would have to be amended to include some such words as those in italics below:

> "Any person who has been adjudicated insane or inebriate and *any person who has been adjudged irresponsible sexually and thereby dangerous to other persons under Chapter 369 Laws of 1939.*"

This section then provides that the court shall adjudge the person restored to capacity:

> "Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, * * *."

It is perfectly obvious that the portion of the section just quoted would have to be amended by adding a proviso in words substantially as follows:

> "Provided, that where such person is one who has been adjudged, under Chapter 369, Laws of 1939, to be irresponsible sexually and thereby dangerous to other persons, such proof shall establish that such person is no longer irresponsible sexually and dangerous to other persons."

Another provision of this section (not found in the section printed by appellee on page 60 of his brief but appear-

ing in Section 8 of Chapter 270, Laws of 1939, which supersedes the section printed by appellee) which would have to be amended is the one reading:

> "In proceedings for the restoration of an insane or inebriate person the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient."

As it now stands, that provision applies only to the insane or inebriate.

Does the provision of Chapter 369 making all laws relating to the insane a part of the act, adopt such laws as they stand insofar as applicable, or does it in addition authorize extensive amendments thereof by probate judges? If the latter, is there any certainty that the 87 probate judges (over 70% of whom are not lawyers or learned in the law) will legislate alike so that the same law will apply to all?

As there is no express power given to probate judges to rewrite the various acts dealing with the insane and, as the only provision of law under which a re-examination is possible is limited by its express provisions to the insane, inebriate or epileptic, and requires extensive amendments to make it applicable to persons adjudged to be psychopathic personalities under Chapter 369, it is, to say the least, extremely doubtful whether there is any method provided for securing a re-examination of the original adjudication. If it be held that the probate judges have no power to rewrite the statutes, then one committed under Chapter 369 must stay in the insane asylum until his death, as it has been adjudged that he is "dangerous," and the release of those who have been adjudged dangerous is expressly forbidden.

As to Vagueness, Indefiniteness and Uncertainty.

The questions arising under this heading are covered on pages 28 to 44 of our original brief. Two additional comments are suggested by appellee's brief.

It is true that the report to the governor referred to in appellee's brief on pages 20-23 dealt with psychopathics generally, and it is suggested that the original of Chapter 369 also dealt with psychopathics generally and that the proviso to Section 1, which we quote later, was dropped after the act was amended to confine it to sexual psychopathics. Speaking of this proviso, appellee on page 23 of his brief says that it:

> "became wholly superfluous *when* the act was confined to sexual matters." (Italics ours.)

That fact is that the original bill submitted to the governor and the legislature was prepared by the present attorney general's staff *and dealt only with sexual psychopathics.* Section 1 then read (omitting the proviso) exactly as it now reads. The attorney general then realized that Section 1 was dangerously vague, indefinite and uncertain, for he thought it necessary to add, and did add, a proviso reading as follows:

> "provided, that political or religious belief or activity, racial origin, or behavior occurring in connection with a labor dispute or a strike, shall not in any case be considered as a basis for a finding of psychopathic personality."

This proviso constituted a considered, deliberate and direct admission by the attorney general of the state that the words and phrases of Section 1 of Chapter 369 were dan-

gerously vague, indefinite and uncertain. As the words and phrases are the same now as they were when the admission was made, the admission stands.

The other comment that we wish to make relates to appellee's total failure to take into consideration that Chapter 369 is an adventure into a new field of legislation, where definitions and standards are always necessary since the words and phrases used have not acquired a body of recognized rules and standards, as is the case with words and phrases reaching back into the early years of the common law. The failure to take such fact into consideration is illustrated by appellee's comment upon the word "insanity" found in the last paragraph of his brief on page 16 thereof. The distinction that we suggest is most commonly illustrated by words and phrases in laws relating to crime but the significance and application thereof is universal. The rule was referred to by this court in Lanzetta v. State —— U. S. ——, 59 S. Ct. 618, where the court held that a New Jersey statute which used the words "gang" and "gangster" was void because too vague, indefinite and uncertain to constitute valid legislation, the court saying of the words: "Nor is the meaning derivable from the common law, * * * *" The rule is also referred to in Connally v. General Construction Co., 269 U. S. 385, 46 S. Ct. 136, where the court refers to "a well-settled common-law meaning." "Sane" and "insane" are words that go back into the early history of the common law and come to us with their aura of well-settled common-law meaning. This is not true of the words and phrases of Section 1 of Chapter 369 and could not be true as that act is a pioneering effort in the opening up of a new field of legislation.

As to the Commitment Being for Life and to an Asylum for the Dangerously Insane.

That the commitment is for life is conceded on page 27 of appellee's brief, where he says: "The commitment is without term." The commitment being without term, death alone could end it unless there was some provision for a re-examination of the original issue. The question as to whether there is such a provision is discussed elsewhere.

It is true that in our original brief (page 56) we referred to Section 8959, Mason's 1927 Statutes, as authority for the statement that the court had no discretion but to commit one adjudged dangerous under Chapter 369 to an asylum for the dangerously insane. The statement we made was correct, but the reference to Section 8959 was incorrect as that section had been superseded by Section 8992-176, Mason's 1938 Supplement. No change in the matter covered by our statement was made by this later section. It is true that it changed the word "asylum" to "hospital" and instead of requiring in express words a commitment to an asylum for the "dangerous" it requires commitment to the "proper" hospital. The proper place for the dangerous is the place provided for the dangerous. The mandatory "*shall*" was retained. This "proper" institution to which the court "shall" issue a warrant of commitment is provided for in Section 4528, Mason's 1927 Statutes, where it is stated that it shall "be known as the state asylum for the dangerous insane."

There is no Provision for Bail.

Counsel for appellee, on page 26 of their brief, claim that we were wrong in saying that there is no provision for release on bail of a person accused under Chapter 369 and they point to Section 8992-178, Mason's 1938 Supplement (printed on page 58 of Appellee's brief) as supporting their statement. By its express provisions, and by its consideration in connection with the other sections of the code, this section 8992-178 is clearly limited to cases where a trial has been had and a finding made of insanity. Notwithstanding such a finding, it provides that the Probate Court, before delivery of the warrant of commitment, has power to:

> "release an insane and inebriate patient to any person who files a bond to the state in such amount as the court may direct, conditioned upon the care and safekeeping of the patient."

If this construction were not correct, the section just quoted would have referred to persons who were "charged" with being insane or "charged" with being inebriate. It refers, however, to the "insane" or "inebriate", clearly showing that trial had been had and adjudication made. The section ends:

> "but no person against whom a criminal proceeding is pending or who is dangerous to the public shall be so released."

As to the Subpoenaing of Witnesses and the Paying of Their Fees and Mileage.

Under the constitutional and statutory provisions referred to in our original brief, the accused in criminal cases

is entitled to "compulsory" process. In such cases the sheriff serves the subpoenas without expense to the accused and the witnesses are required to appear without the payment in advance of witness fees and mileage. The ruling of the Supreme Court that proceedings under Chapter 369 are not of a criminal nature takes away from the accused the benefit of this compulsory process, unless it be available under some other statute.

Appellee in his brief (pages 30, 31) says in substance that compulsory process is available to an accused under Chapter 369 by virtue of Section 8992-177, Mason's 1938 Supplement. He says that this section goes so far as to provide for the payment of "even his personal expenses." (Appellee's brief, page 5.) This last statement is not correct. There is no provision anywhere for the payment of the personal expenses of the accused. The sheriff, or other officer, who has such a person in custody is very naturally put to expense in transporting and lodging his prisoner, and those expenses of the sheriff (not the personal expenses of the accused) are to be paid. The only direct provision mentioning the accused is that which provides that if the court appoints counsel for him, such counsel may be paid $10.00 a day for his services.

Chapter 369 specifically provides what aid is to be extended to one accused thereunder. That aid is limited to two things: first, such person "shall be entitled to have subpoenas issued", and, second, "the court may appoint counsel for him." As Chapter 369 specifically covers the matter under discussion and clearly indicates what aid the legislature intended the accused to receive, there is no occasion for turning to other statutes dealing with other

cases. If Chapter 369 had been silent on such matters, we would have an entirely different situation.

The situation, as outlined in our original brief, is not changed by this Section 8992-177. It is doubtful whether it applies to any but witnesses for the state. There is no provision therein for the sheriff serving subpoenas without cost, and without such service the right of the accused to subpoenas is of no value and there are no witnesses to pay. In addition, there is no requirement in this section compelling witnesses to appear without the payment in advance of their fees and mileage.

As to the Opinion of the Supreme Court.

This opinion is found on pages 17 to 28 of the Record. It deals almost entirely with state questions that are not presented or argued in this court. The only portion of the opinion that could have any bearing upon whether the act violates any of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States is found in the brief discussion by the court of whether the act was so indefinite and uncertain as to be void. That portion of the opinion here referred to reads as follows:

> "Applying these principles to the case before us, it can reasonably be said that the language of Section 1 of the act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual

> propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be an unwarranted departure from the accepted meaning of the words defined. See Draper, 'Mental Abnormality in Relation to Crime' Am. Jour. of Med. Jur., Vol. 2, No. 3, p. 163."

In the above quotation the court, by construction, adds the word "habitually" to the word "irresponsible" in the last few words of Section 1 of the act, thus avoiding the possibility of a conviction thereunder because of a single instance of misconduct in sexual matters. It does not change in any way any of the other provisions of the act, and the "conditions" that must be proved as rendering the person habitually irresponsible remain exactly as they appear in the act as passed.

All other constitutional questions raised by appellant and argued here are disposed of by the summary statement appearing in the opinion on page 28 of the Record, reading:

> "We conclude that the act is constitutional both in form and in application."

The opinion concedes that the constitutional questions that we are urging in this court were raised by the appellant. (Record, p. 19)

The Opinion of the Minnesota Supreme Court Does Not in Any Way Eliminate or Affect Any of the Conditions to an Adjudication Set Out in Section I of Chapter 369.

Section 1 of Chapter 369 defines a psychopathic personality as a person who is rendered irresponsible sexually because of emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, failure to

appreciate the consequences of his acts, or a combination of such conditions. These four qualities are expressly denominated by Section 1 as "conditions." An adjudication under the act cannot be had unless the proof establishes one or more of such conditions and then further establishes that they are the conditions which render the person irresponsible.

The wording of Section 1 forces such a construction and such construction is the basis of the petition for commitment which appears on pages 4 and 5 of the printed record. In that petition it is alleged that the petitioner believed that appellant was a psychopathic personality:

> "*because of* his emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, failure to appreciate the consequences of his acts *as to render* said Charles Edwin Pearson irresponsible * * *." (Italics ours.)

As we read appellee's brief, this seems to be conceded. On page 16 he mentions "the described conditions" and on the same page he says:

> "There is nothing obscure or confusing about the terms in which *the four criteria* are described." (Italics ours.)

And again on the same page appears the following statement:

> "These terms were evidently chosen and framed with care for the guidance of courts, examiners and others concerned with the act."

And at the top of page 17 he says:

> "The fact is that *the criteria* adopted by the act provide the very element of definiteness which appellant

says is lacking. *They define the boundaries of the field of operation of the act.*" (Italics ours.)

There is nothing in the opinion of the Supreme Court indicating any contrary view, and none could be expected as the intention that the accused is to be rendered irresponsible because of "such conditions" is clear and imperative. The court, if it were to attempt to eliminate or change such conditions, would be amending rather than construing the section. The only word added by the Supreme Court in construing the act is found in that paragraph of the opinion appearing in the middle of page 26 of the printed record, where the court construes "irresponsible" sexually as referring to persons who are "habitually" irresponsible sexually. This Section 1 as passed now ends with these words:

> "as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

The only effect of the Supreme Court's opinion is to add the word "habitually" so that as construed by the Supreme Court that portion of Section 1 above quoted will now read, when it comes to enforcement of the act, as follows:

> "as to render such person habitually irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

In all other respects the opinion leaves the act as it was passed by the legislature, making it still necessary to prove that the accused is irresponsible and that such irresponsibility was caused by the existence of one or more of the conditions mentioned in Section 1.

There Was no Waiver by Appellant of the Constitutional Questions Presented in This Court and the Case is Not a Moot One.

On page 44 of appellee's brief it is suggested that certain of the constitutional questions relied upon were not urged upon the attention of the state Supreme Court, and that consequently, the case being a moot one, the court might properly refuse to consider certain of the issues raised. One of the cases cited by appellee in support of his position is Northwestern Bell Telephone Company v. Nebraska State Railway Commission, 297 U. S. 471, 56 S. Ct. 536. That case holds that on an appeal from a judgment of the state court only federal questions discussed by the state court would be reviewed by this court *where the record did not disclose what federal questions were presented to the state supreme court.* The ruling of the court is so stated in the syllabus and also appears clearly from the opinion where the court said:

> "The record does not disclose what, if any, federal questions were presented to the state Supreme Court. Its opinion discusses only the first two contentions made here, and we accordingly confine our review to them."

The question there decided is not the question we have here. As mentioned in our original brief, appellant in his petition directly challenged the constitutionality of the act because violative of several provisions of the Minnesota Constitution and also because it violated the due process of law clause, the equal protection of the laws clause and the privileges and immunities clause of Section 1 of the Fourteenth Amendment to the Constitution of the United

States. (Record, p. 1, f. 2 and Record p. 2, f. 3). This was conceded by the Supreme Court in its opinion. (Record, p. 19.)

Because of the fact that the opinion of the state Supreme Court dealt almost wholly with state questions, and because of that attempt might be made to draw an inference that the appellant had in some way or other waived some of the constitutional questions presented, the Chief Justice of the Supreme Court executed and filed a certificate appearing on page 15 of the Record reading as follows:

> "It is hereby certified that both in his brief and in the oral argument in the above cause, as well as in his original petition, the appellant, Charles Edwin Pearson, urged that Chapter 369, Laws of 1939, was void because it was repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it denied appellant due process of law and the equal protection of the laws and abridged the privileges and immunities of citizens of the United States, and those questions were necessarily decided against appellant when the act was held valid.
>
> "This certificate is made not for the purpose of attempting to confer jurisdiction on the Supreme Court of the United States, but for the purpose of making it clear that the above claims made by appellant in his original petition were not later waived or withdrawn by him, and because the opinion in the case deals almost entirely with state questions."

This certificate, by order of the court, was made a part of the record in this cause and such order appears in the printed record on page 16.

The court will notice from the certificate that it was not made for the purpose of attempting to confer jurisdiction

upon this court but solely for the purpose of making it clear that appellant had never at any time waived or withdrawn the constitutional objections presented by him, but both in his brief and in his oral argument had urged them upon the court. It also appears that the certificate was filed "because the opinion in the case deals almost entirely with state questions."

For the limited purpose above mentioned, such certificates are a perfectly proper aid to this court in determining whether the constitutional questions were urged in the court below.

Honeyman v. Hanan, 300 U. S. 14, 57 S. C. 350.

The above certainly ought to clear up any doubt about whether the appellant had ever at any time waived or withdrawn the constitutional objections originally presented by him. The fact is, as is shown above, that they were at all times relied upon and urged by him.

CONCLUSION.

The hurried passage of this piece of ill-considered and ill-advised legislation is fully explained by counsel for appellee on page 24 of his brief, where he says:

> "It is common knowledge that the bill received much newspaper publicity while under consideration in the legislature."

Respectfully submitted,

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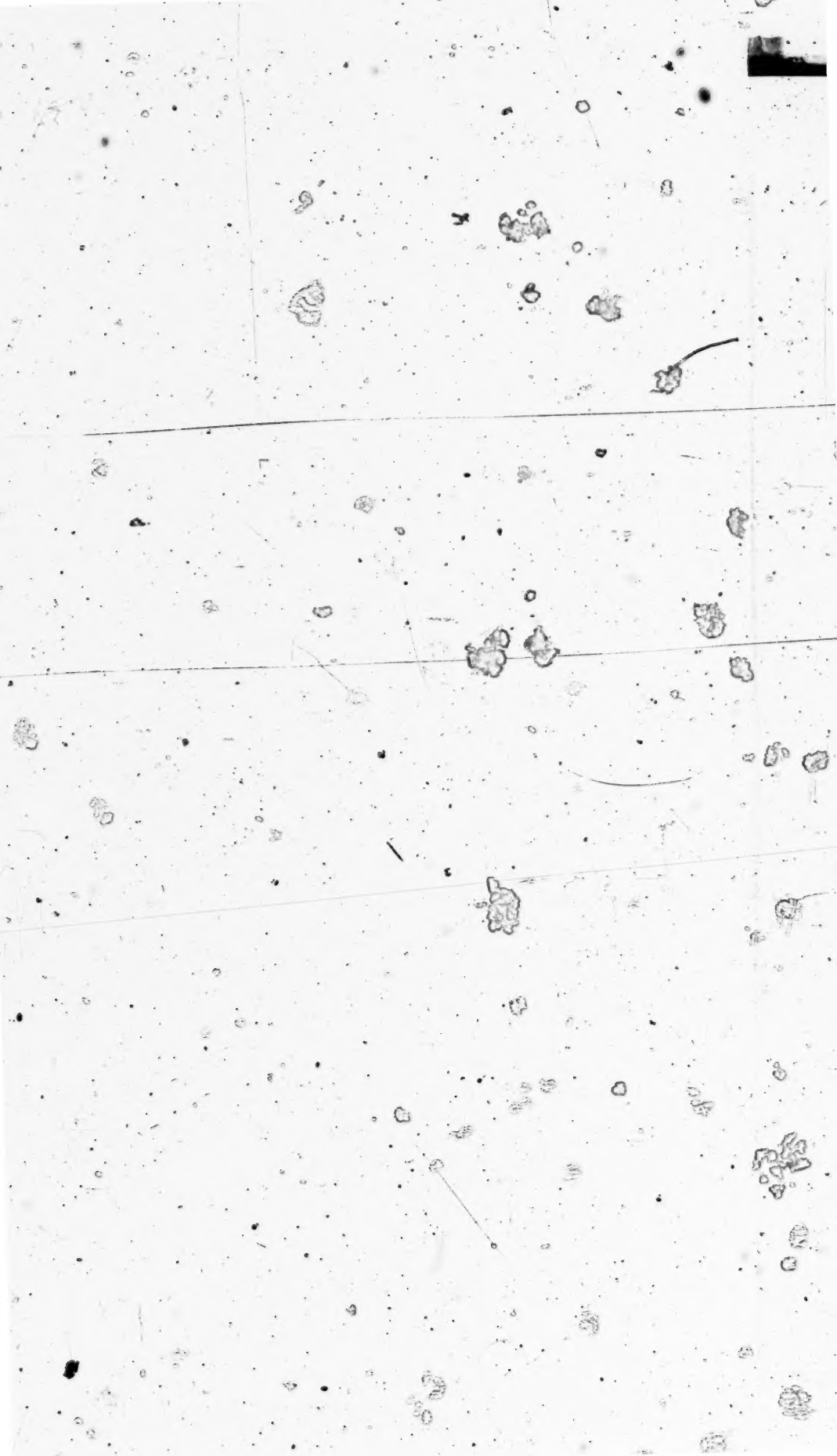

IN THE

Supreme Court of the United States

October Term 1939

No. 394

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,
Appellant,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, and HONORABLE MICHAEL F. KINKEAD, Judge of Said Court of Ramsey County,
Appellee.

APPELLEE'S BRIEF.

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Appellee.

APPELLEE'S BRIEF.

OPINION BELOW.

The proceeding below was an original matter in the Supreme Court of the State of Minnesota entitled State ex rel. Charles Edwin Pearson v. Probate Court of Ramsey County and Another, 205 Minn. 545, 287 N. W. 297 (Record pp. 16-28).

STATEMENT OF THE CASE.

The Minnesota legislature enacted Laws 1939, Chapter 369, known as the psychopathic personality act, providing for the examination and confinement of chronic sexual perverts in substantially the same manner as under existing laws relating to insanity. The act is set forth in full in Appellant's Statement as to Jurisdiction, pp. 11-12, also (with some immaterial errors in the title) in Appellant's Brief, pp. 2-4. A petition was filed under the act in the probate court of Ramsey County, Minnesota, asking for the examination of the relator, and an order for hearing was made by the court. Before the time set for hearing, upon application of the relator, the supreme court of the state issued its alternative writ of prohibition directed to the probate court and the then judge, Honorable Albin S. Pearson, temporarily restraining further proceedings and requiring that cause, if any, be shown why the writ should not be made absolute. A return was made to the writ and the case was heard by the state supreme court as an original matter, with the result that the restraining order was vacated and the writ quashed. Judgment was entered accordingly in the state supreme court, and this appeal was taken therefrom by relator. Judge Pearson of the probate court having been succeeded by the Honorable Michael F. Kinkead, the latter was substituted as respondent.

Appellant attacks the act as violating the equal protection, due process, and privileges and immunities clauses of the Fourteenth Amendment to the Federal Constitution.

SUMMARY OF ARGUMENT.

The Minnesota psychopathic personality act, Laws 1939, Chapter 369, provides for the examination, commitment, and confinement of chronic and dangerous sexual perverts, as mentally defective, in substantially the same manner as insane persons.

The act is within the authority of the state, as *parens patriae,* under the police power, to provide for the care and confinement of persons who are unable to care for or control themselves and who thereby become burdensome or dangerous to society. It is preventive and remedial, not punitive. Its objects are to protect society against injuries from sex perverts and to aid them in overcoming their mental deficiencies.

The definition of psychopathic personality adopted by the act, as construed by the Minnesota Supreme Court, denoting a person who by an habitual course of misconduct in sexual matters has evidenced an utter lack of power to control his sexual impulses and who as a result is likely to attack or injure others, is sufficiently clear to meet the requirements of due process and equal protection under the Fourteenth Amendment to the Federal Constitution.

Procedure under the act, comprising an examination of the subject or "patient" by the probate court, assisted by two licensed physicians, giving the patient the right to notice and hearing, to counsel, to compulsory process for witnesses, and right to appeal, though without jury trial, complies with the requirements of due process under the Fourteenth Amendment, the proceeding being civil, not criminal, in character.

So far as any privileges and immunities of citizens of the United States may be involved, they are not affected by the act to such an extent as to constitute an abridgment in violation of the Fourteenth Amendment.

ARGUMENT.

I.

PURPOSE AND EFFECT OF THE MINNESOTA PSYCHOPATHIC PERSONALITY ACT.

The act begins with the following definition:

> "Section 1. The term 'psychopathic personality' as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

In substance this means a chronic and dangerous sexual pervert.

The act then proceeds to adopt for its purposes all the laws relating to insanity cases, with certain minor changes and additions (Appellant's brief p. 3). The laws thus adopted, so far as here material, are the following: Mason's Minnesota Statutes, 1938 Supplement, Sections 8992-173 to 8992-182, inclusive, covering procedure for examination and commitment; Section 8992-143, covering court proceedings for restoration; Section 8992-164(14) to

8992-171, inclusive, covering appeals; Mason's Minnesota Statutes 1927, Section 4524, and 1938 Supplement, Sections 4523, 8992-179, an 8992-180, covering parole and discharge by the state authorities. Those laws, except the sections on appellate procedure, are set forth in full in the Appendix, *post* pp. 54-61.

Under those laws the person alleged by petition to have a psychopathic personality, designated as "the patient", has the right to an examination and hearing, with benefit of counsel and witnesses. If he is indigent his counsel fees, witness fees, and even his personal expenses, are paid by the public (1938 Supp. Sec. 8992-177). If the patient is committed, he or any person interested in him may at any time thereafter, and from time to time, petition the committing court for restoration to capacity (Id. Sec. 8992-143), with right of appeal (Id. Sec. 8992-164, subdivision 14). If his condition improves sufficiently, he may be released by the authorities in charge of the hospital to which he was committed, subject to approval by the court having jurisdiction of his case (1927 Stat. Sec. 4524, and 1938 Supp. Secs. 4523, 8992-179, and 8992-180).

The act in question provides the following additional safeguards in psychopathic personality cases:

(1) In the definition above quoted, it prescribes definite standards upon which a finding must be based, whereas in insanity cases the decision is left to the opinion of the court and the two medical examiners, based upon general legal or medical definitions;

(2) It requires the preliminary approval of the grounds for the proceedings by the county attorney;

(3) It gives a person found to have a psychopathic personality the right of direct appeal from such finding to the district court, whereas in insanity cases the person committed has no such right of appeal from the original commitment, but must either seek review by certiorari (*State v. Probate Court,* 142 Minn. 499, 172 N. W. 210), or must institute subsequent proceedings for restoration to capacity, wherein, in case of an adverse decision, he may appeal.

II.

POLICE POWER OF THE STATE OVER PSYCHOPATHIC PERSONALITIES.

The state has authority, as *parens patriae,* under the police power, to provide for the care, including confinement, if necessary, of all persons who are unable to care for or control themselves, and who thereby become burdensome or dangerous to society. This power is not confined to the definitely insane, but extends as well to other classes of incompetents, for example, to the feebleminded, to inebriates, and to juvenile delinquents.

Ex parte Januszewski, C. C. S. D., 196 F. 123.

U. S. ex rel. Yonick v. Briggs, D. C., 266 F. 434.

Ex parte Ah Peen, 51 Cal. 280.

Re Daedler, 194 Cal. 320, 228 P. 467.

Cinque v. Boyd, 99 Conn. 70, 121 A. 678.

Re Sharp, 15 Idaho 120, 96 P. 563, 18 L. R. A. (N. S.) 886.

Wissenberg v. Bradley, 209 Ia. 813, 229 N. W. 205, 67 A. L. R. 1075.

Marlowe v. Com., 142 Ky. 106, 133 S. W. 1137.

State ex rel. Olson v. Brown, 50 Minn. 353, 52 N. W. 935, 16 L. R. A. 691, 36 A. S. R. 651.

Re Peterson, 151 Minn. 467, 187 N. W. 226.

Ex parte Newkosky, 94 N. J. L. 314, 116 A. 716.

Re Watson, 157 N. C. 340, 72 S. E. 1049.

State v. Burnett, 179 N. C. 735, 102 S. E. 711.

Prescott v. State, 19 Ohio St. 184, 2 Am. R. 388.

Leonard v. Licker, 3 Ohio App. 377, 23 Ohio C. C. N. S. 442.

Com. v. Fisher, 213 Pa. 48, 62 A. 198, 5 Ann. Cas. 92.

Com. v. Carnes, 82 Pa. Super. Ct. 335.

Wisc. Ind. School v. Clark County, 103 W. 651, 79 N. W. 422.

State v. Scholl, 167 W. 504, 167 N. W. 830.

State ex rel. Matacia v. Buckner, 300 Mo. 359, 254 S. W. 179.

Vinstad v. St. Bd. of Control, 169 Minn. 264, 211 N. W. 12.

In Re Application of O'Connor, 29 Cal. App. 225, 155 P. 115.

Gaston v. Babcock, 6 Wisc. 490 (503).

County of Black Hawk v. Springer, 58 Ia. 417, 10 N. W. 791.

Re Moynihan, 332 Mo. 1022, 62 S. W. (2) 410, 91 A. L. R. 74.

Dowdell v. Peterson, 169 Mass. 387, 47 N. E. 1033.

Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393.

Prokosch v. Brust, 128 Minn. 324, 151 N. W. 130.

Upon similar principles such measures as compulsory vaccination and sterilization of mental defectives have been sustained.

Jacobson v. Mass, 197 U. S. 11.
Zucht v. King, 260 U. S. 174.
Buck v. Bell, 274 U. S. 200.

As will be more fully developed in a later part of this brief, medical science has recognized persons with psychopathic personalities, including chronic sex perverts, as a definite class of mental defectives. They suffer from persistent mental disorders of which the chief characteristic is lack of moral sense and power of self-control. Yet they usually retain a large measure of intellectual capacity, enabling them to plan and commit crimes and to escape detection in ways that would be impossible for other types of mental defectives. Hence persons with psychopathic personalities are often a greater menace to society and get themselves into worse difficulties than persons usually classed as insane or feebleminded, and they have as great or greater need for the protective guardianship of the state.

Although the manifestations of psychopathic personality cover a much wider field, the Minnesota act is limited to those of the sexual type, as involving the gravest consequences to society. The problem of the chronic sex pervert is as old as civilization. For centuries society has attempted to deal with that problem by criminal laws. To a large extent this has been ineffectual. It has long been common knowledge that there are types of sex offenders whom no amount of punishment will restrain and who inflict severe and often irremediable injuries on many innocent victims.

every year. Recognition by the law of the fact already known to science, that the underlying cause of such misconduct is mental disease and not criminal intent, has pointed the way to a solution. The Minnesota act is based upon this principle.

Possibly psychopathic personality cases could have been handled under the existing laws relating to insanity without the express provisions of the act. In the broad sense, insanity includes any form of unsoundness of mind. At one time only raving maniacs were treated as insane, but as new forms of mental disease have been recognized by medical science from time to time, they have been included within the operation of the insanity laws without any specific amendments of the definition of insanity. However, as a general rule psychopathic personality cases have not been so included in practice because they usually involve moral deficiency rather than specific intellectual deficiency which is commonly regarded as characteristic of insanity. So it has often happened that a criminal court in a sex crime case, convinced that the accused was mentally abnormal, would order an examination of his mental condition, only to have him returned by the examining authorities because they failed to find him insane or feebleminded under the accepted definitions. The criminal court would then have no alternative, upon conviction of the defendant, but to sentence him to a penal institution. Proper treatment for his mental affliction at such an institution would be difficult or impossible. Sooner or later he would be released, only to resume his aberrant behavior and inflict further injuries upon others.

The act in question was enacted to make applicable to such cases the appropriate remedies already provided for

insanity cases. It is preventive and remedial, not punitive. Its objects are to protect society against injuries from sex perverts and to aid them, by proper confinement and treatment, in overcoming their mental deficiencies, as far as possible. The merits of this plan, as compared with the old procedure of inflicting futile punishment after crimes had been committed, are evident. In principle it is clearly within the police power of the state. The only question is whether the particular provisions of the Minnesota act violate or fail to meet some constitutional requirement.

III.

SUFFICIENCY OF DEFINITION OF PSYCHOPATHIC PERSONALITY.

Appellant attacks the definition of psychopathic personality adopted by the Minnesota act as contravening the due process and equal protection clauses of the Fourteenth Amendment on the following grounds:

(a) That it is vague, indefinite, and uncertain (Brief pages 28-44);

(b) That it creates an arbitrary and unreasonable classification (Brief pages 17-28).

(a) *The Definition is Clear.*

The definition of psychopathic personality given in Section 1 of the act (supra page 4), comprises the following elements:

(1) The existence in the person concerned of some or all of the following conditions:

(a) Emotional instability;

(b) Impulsiveness of behavior;

(c) Lack of customary standards of good judgment;

(d) Failure to appreciate the consequences of his acts;

(2) Resulting irresponsibility for conduct with respect to sexual matters; and

(3) Resulting danger to other persons.

Appellant asserts that there is much uncertainty as to the definition of psychopathic personality in general (Brief pages 10-16), and as to the various elements of the Minnesota definition in particular (Brief pages 28-39). Careful analysis refutes this contention.

In a broad sense, especially in earlier usage, the term "psychopathic" has been defined as pertaining to any mental disease or disorder.

Webster's New International Dictionary, First Edition, 1931.

New Standard Dictionary, 1931.

New Century Dictionary, 1927.

Gould's Medical Dictionary, 1931.

Stedman's Medical Dictionary, 1911.

However, in the world of medical science the tendency, especially in recent years, has been to give a limited and specific meaning to the term "psychopathic" and related terms. For example, *Stedman's Medical Dictionary,* published in 1911, gave the following definition of "psychopath":

> "The subject of a psychosis or psychoneurosis; especially one who is of apparently sound mind in the ordinary or extraordinary affairs of life, *but who is*

dominated by some abnormal sexual, criminal, or passional instinct." (Italics ours.)

In *Gould's Medical Dictionary*, published in 1931, although "psychopathy" is defined in general terms as "any disease of the mind," the related term "psychopath" is defined as "a morally irresponsible person," and the term "*psychopathia sexualis*" is defined as "the psychopathic perversion of the sexual functions."

These special connotations have become so well established that they are recognized in the second edition of *Webster's New International Dictionary*, published in 1938, in which the earlier general definition of "psychopathy" as "mental disorder in general" is repeated, followed by this new elaboration:

> "More commonly, mental disorder not amounting to insanity or taking the specific form of a psychoneurosis, but characterized by defect of character or personality, eccentricity, emotional instability, inadequacy or perversity of conduct, undue conceit and suspiciousness, or lack of common sense, social feeling, self-control, truthfulness, energy, or persistence. Different psychopathic individuals show different combinations of these traits."

To the same effect is the definition in *Henderson & Gillespie's Textbook of Psychiatry*, Fourth Edition (1936), page 392:

> "Under this heading we include persons who have been from childhood or early youth habitually abnormal in their emotional reactions and in their general behavior, but who do not reach, except perhaps episodically, a degree of abnormality amounting to certifiable insanity, and who show no intellectual defect.

> They exhibit lack of perseverance, persistent failure to profit by experience, and habitual lack of ordinary prudence. Such conditions commonly result in occupational instability, economic insufficiency, sexual excesses, alcoholism, drug addiction or delinquency."

The Minnesota Supreme Court, construing the act in the instant case, in 205 Minn. at page 553 (Record pp. 23, 24), said:

> "It is true that the term 'psychopathic' is not a part of the working vocabulary of most people. Yet the reasonably well informed recognize it as having reference to mental disorders. (See Dorland, American Illustrated Medical Dictionary (15 ed.) supra. To those concerned with mental cases, it connotes a condition of the mind causing the person afflicted to be hopelessly immoral. In either case, the fact that the law deals with the sexually irresponsible would not come as a surprise to legislators or members of the public who might have occasion to read its title."

And in the same opinion, at page 555, the court said:

> "Applying these principles to the case before us, it can reasonably be said that the language of § 1 of the act is intended to include those persons who by an habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulses and who as a result are likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and perhaps unconstitutional in its application, but would also be an

unwarranted departure from the accepted meaning of the words defined. See Draper, 'Mental Abnormality in Relation to Crime,' 2 Am. Jour. Med. Jur. No. 3, p. 163."

From the definitions quoted, it is clear that psychopathic personality is now recognized by medical science as a distinct abnormal mental condition. The authorities are by no means in a state of uncertainty and confusion over the meaning of the term, as contended by appellant. They differ in their language, as they do when discussing insanity, feeblemindedness, or any other technical subject. However, they agree in principle with the statements of the Minnesota Supreme Court, supra, that psychopathic personality "connotes a condition of the mind causing the person afflicted to be hopelessly immoral," and is manifested by "an habitual course of misconduct" evidencing "an utter lack of power to control their * * * impulses." In short, it means a persistent or permanent mental and moral deficiency as distinguished from a passing or temporary lapse of self-control.

As before stated, a psychopathic is not insane or feebleminded according to modern medical or legal concepts. Insanity, generally speaking, implies that the mind of the victim has partly or wholly lost touch with the real world, so that, to him, things are not what they seem. He may have delusions or hallucinations, or may suffer from some form of dementia, mania, or melancholia. That is not usually true of the psychopathic. There is no pathological disturbance of the ordinary functions of his mind, such as attention, comprehension, memory, or association. Neither is he inherently deficient in intellectual capacity, like a

feebleminded person. His intelligence quotient may be normal or above normal. He can distinguish between right and wrong from an intellectual standpoint. Yet he is definitely abnormal, in that by reason of some deep-seated and often incurable mental deficiency he cannot control certain proclivities which normal people do control, and cannot appreciate the consequences of his acts from a moral standpoint. He does not have a low intelligence quotient, but rather a low moral quotient. Such persons are sometimes called moral imbeciles as distinguished from intellectual imbeciles. They lack what some psychiatrists call "endowed moral capacity," and this is manifested in repeated and uncontrollable irregularity of behavior. Always the main criterion is a more or less fixed or constitutional mental deficiency resulting in lack of self-control.

A review of the scientific authorities shows clearly that psychopathic personality, at least of the sexual type covered by the act in question, is well defined and that it can be diagnosed upon examination with just as much certainty as the various forms of insanity which are commonly recognized and dealt with by medical science and by the law.

Appellant warps the definition of psychopathic personality in the act into an absurd and untenable construction in order to make ground for his argument that it is vague and unfairly selective. He says that the four conditions specified as criteria of psychopathic personality, namely, emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, and failure to appreciate the consequences of acts, are really symptoms, but that the act treats them as causes (Brief pages 18-19), and

that these conditions are commonly associated with other types of psychopathic personalities rather than the sexual type to which the act applies (Brief page 13). Appellant also insists that the act limits itself to certain kinds of sexual irresponsibility traceable only to the specified conditions (Brief page 18), and so excludes other kinds which may be dangerous (Brief page 19).

Argument as to whether the four specified criteria are symptoms or causes is academic and pointless so far as the purpose and effect of the act are concerned. It is immaterial whether these criteria are themselves the immediate cause of the patient's sexual perversion, or whether they are but symptoms of deeper underlying causes. The important thing is that when the described conditions are present they signify a definite abnormality of mind and character requiring treatment.

There is nothing obscure or confusing about the terms in which the four criteria are described. They depict the traits which any intelligent observer of human conduct, even without the aid of experts, would expect to find in a person who was chronically irresponsible for his conduct, or, as the Minnesota Supreme Court said, hopelessly immoral. These terms were evidently chosen and framed with care for the guidance of courts, examiners, and others concerned with the act. They are the signs of the defects of character which must be found present in order to warrant a finding of psychopathic personality.

If these terms are indefinite, what is to be said about the term "insanity", which, in most laws on the subject, stands without explanation, to be applied to an ever-widening field defined only by human experience and scientific research?

The fact is that the criteria adopted by the act provide the very element of definiteness which appellant says is lacking. They define the boundaries of the field of operation of the act. They are broad enough to include all the various forms of sexual perversion which appellant says are excluded, provided always the essential factor of danger to others is present. At the same time they are restrictive enough to limit the application of the act to those whose irresponsibility is deep-seated and chronic, excluding normal persons who may merely have yielded to a passing temptation. Such a limitation is necessary in order to prevent too loose an application of the act, as the Minnesota Supreme Court pointed out.

If there was any doubt as to the meaning of psychopathic personality adopted by the act, it has been set at rest by the construction placed upon it by the Minnesota Supreme Court in the quoted statements. Under this construction, in order to warrant a finding of psychopathic personality, it must appear: (1) that the patient has carried on an habitual course of misconduct in sexual matters, (2) thereby evidencing an utter lack of power to control his sexual impulses, (3) as a result of which he is likely to injure others. This construction is binding upon courts and examiners in Minnesota. It sets up for their guidance a plain, strict working rule, amply safeguarding the liberty of persons who may become the subjects of examination under the act.

The provisions of the act, as construed by the state supreme court in the instant case, are fully as clear as those of many other statutes, including criminals laws, which have been sustained.

Fox v. Washington, 236 U. S. 273.
Waters-Pierce Oil Co. v. Texas (No. 1), 212 U. S, 86.
Nash v. U. S., 229 U. S. 373.
Miller v. Strahl, 239 U. S. 426.
Omaechevarria v. Idaho, 246 U. S. 343.

This case is governed by well-established rules of statutory construction,—that the construction given state laws by the highest courts of the states will be accepted, that statutes should be construed, where fairly permissible, so as to be reasonable in effect and so as to avoid doubtful constitutional questions, and that it is to be presumed that state laws will be so construed by the state courts.

Jacobson v. Massachusetts, 197 U. S. 11.
Plymouth Coal Co. v. Penna., 232 U. S. 531.
Fox v. Washington, supra.
Douglas v. New York, New Haven, and Hartford R. R. Co., 279 U. S. 377.
Utah Power and Light v. Pfost, 286 U. S. 165.
Stephenson v. Binford, 287 U. S. 251.
Aero Mayflower Transit Co. v. Ga. Pub. Serv. Comm'n., 295 U. S. 285.

In *Jacobson v. Massachusetts, supra*, involving a state compulsory vaccination statute which exempted children certified as unfit for vaccination, the court held that the statute did not violate the equal protection clause because it failed to give adults a similar exemption, quoting with approval the following statement from *United States v. Kirby*, 7 Wall. (74 U. S.3 482:

"All laws should receive a sensible construction. General terms should be so limited in their application as

> not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter."

The court also pointed out in the Jacobson case that extreme cases of possible abuse which might be suggested were not safe guides in the administration of the law, saying:

> "We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned."

The rules of statutory construction above stated prevail in Minnesota.

State ex rel. Decker v. Montague, 195 Minn. 277, 262 N. W. 684.

State ex rel. Kirk v. Remmey, 170 Minn. 293, 212 N. W. 445.

This disposes of appellant's fears that the application of the act would be a matter of guesswork and subject to abuse (Brief pages 29-31).

Appellant refers with apparent approval to a report made to the Illinois legislature by a committee of psychiatrists appointed by the state's attorney of Cook County, and to their definition of sexual psychopaths which was adopted in an act of that legislature, Jones' Illinois Annotated Statutes, Section 37.665 (4) (Brief pages 13-16).

A comparison of that definition with the one adopted in the Minnesota act, as construed by the state supreme court, shows that they do not differ greatly in effect, and that, if anything, the Minnesota definition is more complete and definite.

By way of contrast with the Illinois procedure, appellant asserts that the members of the Minnesota legislature had little knowledge of psychopathic personalities at the time the act in question was passed (Brief page 13), that they gave it scant consideration (Brief page 9), and that the state senate confessed ignorance of the subject by adopting a resolution asking for the appointment of a committee to study psychopathic personalities and report at the next legislature (Brief pages 10, 13).

As appellant says, the courts in Minnesota take judicial notice of legislative journals and files and other public files and records when necessary to aid in the construction of laws (Brief page 9). However, the state supreme court found it unnecessary to resort to such sources in the instant case. Its decision makes no reference to the legislative history of the act. Hence the materiality here of appellant's references in this connection may be questionable. However, since appellant has adverted to these circumstances, we deem it proper to disclose the full facts.

The records of the Governor's office and of the legislature show that some time before the introduction in the legislature of the bill for the act in question the Governor had appointed a committee to study the problem of the care of insane, defective, and psychopathic criminals. This committee was composed of ten experts of the highest standing in the state, including the professor of psychiatry and head of the department of medicine at the University of

Minnesota medical school, the chief psychiatrist of the United States Veterans' Hospital at Minneapolis, the heads of two of the state hospitals for the insane, an eminent specialist on the subject from the Mayo Clinic, and four other leading psychiatrists in private practice, with the professor of sociology at the state university as chairman. Shortly before the introduction of the bill this committee made its report to the Governor. On April 4, 1939, the day before the bill was introduced, the Governor transmitted copies of the report to both houses of the legislature, with a letter endorsing the recommendations of the committee (Minnesota legislature, House Journal April 4, 1939, page 1392; Senate Journal April 5, 1939, page 1072).

In this report, after an introductory discussion of the problems of insane, defective, and psychopathic criminals, with some comments on sexual behavior, the committee said:

> "This committee has approached the problem primarily from the standpoint of what action might be desirable on the part of the legislature. The following two recommendations are submitted for action by the legislature this session."

Then followed the recommendations, covering, in substance, (1) immediate legislation, (2) the appointment of a committee to "arrange for, supervise, or direct a more comprehensive study of the legal, medical, and administrative aspects of the whole problem of defective, psychopathic, and insane persons, both criminal and noncriminal," in cooperation with committees of the bar, medical associations, and other groups.

With respect to immediate legislation the committee recommended that the statutes defining defectives (including the feebleminded, the inebriate, and the insane) be amended by inserting "the individual with a psychopathic personality" as an additional class of defectives, also by inserting the following definition:

> "The term 'psychopathic personality' as used in this act means any person who, because of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to evaluate the consequences of his acts, or combinations of these conditions, is socially or morally irresponsible, sexually or otherwise, and who as a result of such conduct becomes a menace to the public good and requires supervision."

Further recommendations were made for changes in the probate code necessary to make the procedure for examination and commitment of the insane and other defectives applicable to persons having psychopathic personalities.

The report said further:

> "This recommendation will have the effect of extending the powers of police and prosecuting officials through the probate court to persons known to be dangerously psychopathic or defective without waiting for definite, and sometimes horrible, criminal acts to be committed. A serious limitation in present procedure is the inability of officials to deal with such persons before they commit criminal acts. The proposed changes will remedy this situation. Though the grant of powers proposed is considerable, the Committee feels that the special conditions of the definition suggested will give adequate protection to the citizen against persecution through arbitrary acts of incompetent or unfriendly officials.

"Modification of the law as suggested is highly desirable as a matter of immediate legislative action. No appropriation for additional facilities is suggested at this time. In the development of a long-time program, it is probable that additional facilities and new types of institutional treatment will need to be provided. That, however, is a matter which the Committee does not feel competent to discuss at the present time."

* * * * *

"These two recommendations are submitted as suggestions for the best procedure to be followed in dealing with the problem of the insane criminal and the sex criminal. The immediate needs of law enforcement officers are cared for in the first recommendation. In view of the many aspects involved in a long-time view of the problem, it is suggested that an interim committee of the Legislature is the best auspices under which to survey the facts and shape up a program for future action."

It will be noted that the legislature in the act in question followed quite closely the definition framed by the committee of experts, making only such changes as were necessary to limit the application of the act to the sexual type of psychopathics.

The proviso for exclusion from consideration of political or religious beliefs and other matters, quoted on page 10 of appellant's brief, was included in the amendments recommended by the committee, but was dropped out in the act, for the obvious reason that it was probably unnecessary in any event, and became wholly superfluous when the act was confined to sexual matters.

It is noteworthy that in both houses of the legislature the bill was recommended by the judiciary committees, which,

by custom, are composed of all the lawyers in the respective houses, and that it was passed in both houses without a dissenting vote.

House Journal, April 5, 1939, page 1135; April 18, 1939, page 2141.

Senate Journal, April 14, 1939, page 1398; April 18, 1939, page 1600.

The files of the senate judiciary committee show that it held public hearings on the bill, which were attended by prominent law enforcement officials, lawyers, physicians, and others. It is common knowledge that the bill received much newspaper publicity while under consideration in the legislature.

The senate resolution for the appointment of interim committees, mentioned by appellant, was in conformity with the second recommendation of the committee of experts (*Senate Journal*, April 18, 1939, page 1601). It was in no sense a confession of ignorance on the subject-matter of the act.

(b). *The Definition Makes no Arbitrary or Unreasonable Classification.*

Appellant concedes the right of the legislature to make a classification of sexually irresponsible persons for the purposes of the act (Brief page 17), but asserts that the definition of psychopathic personality which was adopted selects for treatment certain kinds of sex perverts and excludes others who are just as much in need of treatment, thereby creating an unreasonable and arbitrary classification (Brief pages 18-28).

For the most part this argument has been met under the preceding heading in this brief, pages 10-20. It was there shown that the definition was broad enough to include all cases coming within the intended field of chronic and dangerous sex perverts, yet restrictive enough to confine the application of the act to that field. Appellant could sustain his contention on this point only by a strained and illogical construction of the act, which is untenable under the interpretation given by the Minnesota Supreme Court.

Even if some types of sexually irresponsible persons were excluded under the definition, it would not necessarily invalidate the act. There is a strong presumption that classifications made by statutes are based upon adequate grounds, and they will not be held void unless clearly arbitrary.

Orient Insurance Co. v. Daggs, 172 U. S. 557.
Jacobson v. Massachusetts, 197 U. S. 11.
Batchel v. Wilson, 204 U. S. 36.
Watson v. Maryland, 218 U. S. 173.
Chicago Dock & Canal Co. v. Fraley, 228 U. S. 680.
Miller v. Wilson, 236 U. S. 373.
Price v. Illinois, 238 U. S. 446.
Middleton v. Texas Power and Light Co., 249 U. S. 152.
Dominion Hotel v. Arizona, 249 U. S. 265.
Buck v. Bell, 274 U. S. 200.
Whitney v. California, 274 U. S. 357.

The general principle was stated in *Miller v. Wilson*, *supra*, as follows:

> "If the law presumably hits at the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have applied."

In *Buck v. Bell, supra,* involving a law which provided for the sexual sterilization of mentally defective inmates of institutions, it was held that failure to extend the act to similar mental defectives outside the institutions did not violate the equal protection clause.

The cases above cited go much further than is necessary in order to sustain the reasonableness of the classification adopted by the act in question.

IV.

PROCEDURE UNDER THE ACT IS DUE PROCESS.

Appellant attacks the procedure under the act in question as failing to meet the due process requirements of the Fourteenth Amendment on the grounds (a) that it is vague, indefinite, and uncertain, and (b) that it is arbitrary and lacking in safeguards for the security of private rights (Brief pages 44-60).

Before proceeding to discuss this branch of the case, it is necessary to clear up the facts with reference to a number of assertions made in appellant's brief.

Appellant says that the "accused" (who should more properly be called the "patient", as designated in the act) has no right of release on bail (Brief page 29). This is incorrect. Release on bond at any time before commitment is provided for by Mason's Minnesota Statutes, 1938 Supplement, Section 8992-178 (*post* p. 58), unless a criminal proceeding is pending against the patient, or unless he is dangerous to the public. Although a finding of psychopathic personality would imply that the patient was dangerous to others, he would not be barred from release

on bond at any previous stage of the proceedings. Before such finding was made, the court would have full discretionary power to determine whether or not the patient might safely be released on bond. This is clearly a reasonable provision. In any event, we find no authority holding that there is any constitutional right to bail in such a proceeding.

Appellant says that under the act "upon conviction" (a term not appropriate in such proceedings) the court is required to commit the accused for the rest of his life to an asylum for the dangerous insane (Brief page 29). There is no such requirement. As in an ordinary insanity case, the commitment is without term, subject to the right of the patient or anyone interested in him to petition the committing court for release at any time (Mason's Minnesota Statutes, 1938 Supplement, Section 8992-143, *post* p. 60), with right of appeal (Section 8992-164, Subd. 14); also subject to the right of the state authorities in charge of the hospital, with the approval of a court of competent jurisdiction, to parole or discharge the patient at any time, if his condition warrants (Mason's Minnesota Statutes 1927, Section 4524, and 1938 Supplement, Sections 4523, 8992-179, 8992-180; *post* pp. 61, 58).

Appellant says that by virtue of the adoption of the procedure in insanity cases, the county attorney, who has prejudged the case and prepared the petition against the patient, is required to appear in his defense and protect his rights (Brief page 42). This is contrary to a proper construction of the law. It is true that under Mason's Minnesota Statutes, 1938 Supplement, Section 8992-174

(*post* p. 54), in an insanity case the county attorney is required to appear for a patient who has no counsel of his own, unless the court determines that the latter's interests require the appointment of other counsel. However, the application of this provision to psychopathic personality cases is necessarily excluded by reason of (1) the qualifying clause, "except as otherwise herein or hereafter provided," attached to the provision in Section 2 of the act adopting the insanity laws; (2) the express provision in the act requiring the county attorney to review the facts and prepare the petition for examination, which would be inconsistent with his appearance for the patient at any stage of the proceedings; and (3) the express provision in the act authorizing the court to appoint counsel for an indigent patient at public expense. In view of the latter provision, no constitutional question can be raised in this connection.

Appellant says that the act is indefinite as to whether the finding in a psychopathic personality case is to be made by the probate judge alone or by the two licensed doctors appointed as examiners (Brief page 43). In this connection appellant reads into the law two former provisions relating to insanity, Mason's Minnesota Statutes 1927, Sections 8958 and 8959. Both of these sections were repealed by Section 196 of Laws 1935, Chapter 72 (the probate code), being the same as Mason's Statutes, 1938 Supplement, Section 8992-196. The applicable statute is now Mason's 1938 Supplement, Section 8992-175, *post* p. 55, (same as Section 175 of the probate code, referred to in appellant's brief, page 43). This section of the probate code and Section 2 of the act in question are alike in requiring the court to appoint two duly licensed doctors of

medicine to assist in the examination of the patient. In addition the code section provides, "the examiners and the court shall report their findings * * *." Presumably this is incorporated by reference in the act in question, there being nothing therein to the contrary. There is no conflict or uncertainty about these provisions. If a finding should be improperly made in a particular case, it would be, at most, an error which could be taken advantage of by motion or upon appeal.

Iowa Central Ry. Co. v. Iowa, 160 U. S. 389, 393.
State v. Kilbourne, 68 Minn. 320, 71 N. W. 396.

The question as to the adequacy of the tribunal created by the act and whether or not a jury trial is required will be discussed later.

Appellant says that no one knows what statutes are referred to in the provision of Section 2 of the act in question that the petition shall be filed "with the judge of the probate court of the county in which the 'patient', as defined in such statutes, has his settlement or is present." (Brief pages 43-44). This provision appears immediately after the provision referring to the laws relating to insanity cases. Those laws provide that a petition for examination shall be filed "in the court of the county of the patient's settlement or presence." (Mason's Statutes, 1938 Supplement, Section 8992-174, *post* p. 54). The word "patient" is defined by the same section as "any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person proceedings have been instituted or completed." The term "settlement" as used in these provisions and elsewhere in the laws relating to insanity is

well understood in Minnesota, both through statutory definition and long-established usage. It could refer to nothing else but settlement for poor relief purposes, as defined by Mason's Minnesota Statutes, 1938 Supplement, Section 3161, as amended by Laws 1939, Chapter 398. Thereunder settlement means, substantially, a person's regular place of residence, with certain qualifications as to time. It is of principal importance in proceedings for the examination of the insane or other mental defectives for the purpose of fixing the liability of the proper county for expenses. (Mason's Statutes, 1938 Supplement, Section 8992-177, *post* p. 54). It has no material bearing on the personal rights of the patient, in view of the fact that he may be examined in any county in which he is present, whether it happens to be the county of his settlement or not.

Appellant says that a person may be committed under the act without benefit of counsel (Brief page 57). This ignores the provisions of Section 2 of the act giving the patient the right to be represented by counsel, also the provisions of the same section and of Mason's 1938 Supplement, Section 8992-177 (*post* p. 57), providing for appointment of counsel at public expense for an indigent patient. The question whether the right to counsel at public expense is essential to due process will be discussed later.

In saying that a person may be committed under the act without the presence of witnesses in his behalf, because there is no applicable provision of law for compulsory process or for the payment of witness fees or mileage (Brief pages 57-58), appellant overlooks the provision in Section 2 of the act in question that the patient shall be entitled to subpoenas from the court to compel the attendance of wit-

nesses in his behalf, also the provision of the insanity laws, incorporated by reference, for payment by the county of the fees and mileage of all witnesses (Mason's Statutes, 1938 Supplement, Section 8992-177, *post* p. 57). No distinction is made between witnesses subpoenaed in support of the petition and those subpoenaed in behalf of the patient. In view of these provisions it is difficult to see how any constitutional question respecting the patient's right to obtain the attendance of witnesses could be raised. However, the question as to how far that right is involved in due process will be discussed later.

Appellant fears that the act may be made the means of blackmail (Brief page 29). What bearing this has on the issues is not clear. However, there are some safeguards which would make it rather difficult to use proceedings or threats of proceedings under the act for purposes of persecution or extortion. First there is the requirement for preliminary consideration of the grounds for the petition by the county attorney. Appellant says that this provision is weak because the law does not say expressly that the county attorney must investigate (Brief page 40). However, it is required that before proceedings are instituted the county attorney shall be satisfied that good cause exists. Whether he investigates further or not, it is to be presumed that he will at least consider carefully the facts submitted to him, and that unless he is satisfied that they are sufficient he will refuse to file a petition. The next safeguard is provided upon the filing of the petition, when it becomes the duty of the probate judge to determine that the proceedings are for the best interests of the patient or of his family or of the public before proceeding further (Mason's 1938 Supplement, Section 8992-174, *post* p. 55).

This is not a criminal proceeding, so the same strictness is not required as in criminal cases. However, the preliminary steps under the act, as above outlined, correspond closely with the established practice in Minnesota in criminal cases. The statute authorizes any magistrate to issue a warrant of arrest for crime upon a sworn complaint made before him, if it appears to him that the alleged offense has been committed (Mason's Statutes 1927, Section 10577). However, although not expressly required by law, it is the general practice of magistrates to require complainants in criminal cases, except those of minor degree, to secure the approval of the county attorney before issuing warrants of arrest.

Even if trumped-up charges should in some way get past the preliminary safeguards, it is highly improbable that they would survive examination by the probate court and two licensed physicians, with the patient protected by counsel.

On the whole, the difficulties in the way of filing or sustaining false charges under the act are such as to discourage abuse of the proceedings. A further deterrent is found in Mason's 1938 Supplement, Section 8992-182 (*post* p. 59), which makes the malicious filing of a false petition a felony.

All the fears of abuse expressed by appellant might just as truly be urged against any other law dealing with mental deficiency or crime. It is impossible to contrive any kind of law so perfect that it cannot be abused. Much must be left to the judgment and integrity of the courts and other agencies charged with the administration of the laws. That they will act conscientiously and reasonably is always presumed.

Jacobson v. Massachusetts, supra, p. 18, and other cases there cited.

The past abuses conceived by appellant do not go to the merits of the act, but would, if they occurred, be errors in specific cases, for which adequate remedies are provided by appeal or otherwise.

Iowa Central Ry. Co. v. Iowa, supra, p. 29.

State v. Kilbourne, supra, p. 29.

It would be difficult to frame clearer procedural specifications than those prescribed in the act in question.

(b) *Procedure is not Arbitrary nor Lacking in Safeguards for Private Rights.*

There remain for discussion the following points urged by appellant in support of his contention that procedure under the act fails to meet the due process requirements of the Fourteenth Amendment in that it is arbitrary and lacking in safeguards for private rights (Brief pages 57-58—order rearranged for purposes of this discussion):

(1) That no jury trial is allowed;

(2) That the patient may be committed without benefit of counsel;

(3) That compulsory process for obtaining witnesses for the patient is not provided;

(4) That the hearing is private;

(5) That the hearing may be held in a county remote from the patient's residence;

(6) That the examining tribunal is not competent.

Before discussing the particular points, we call attention to some general considerations bearing upon all of them.

The state supreme court in its decision in the instant case determined that proceedings under the act are not criminal in character (205 Minn. page 556; Record page 27). Hence the case is governed by the rules applicable to civil proceedings. It may be conceded that in construing the provisions of the act due weight should be given to the fact that it affects the liberties of citizens. However, that does not make applicable the rules which obtain in criminal cases. To a large extent appellant's contentions pertain to rights guaranteed by the state consitution in such cases. The decision of the state supreme court is conclusive thereon. The only question at issue here is, does the act meet the requirements of the Fourteenth Amendment with respect to due process of law?

The essentials of due process under the Fourteenth Amendment in both civil and criminal cases are (1) reasonable notice and (2) a fair opportunity to be heard. Subject thereto, the procedure in all such cases is under the control of the states.

Iowa Central Ry. Co. v. Iowa, 160 U. S. 389, 393.
Simon v. Craft, 182 U. S. 427, 436.
Missouri ex rel. Hurwitz v. North, 271 U. S. 40, 42.
Hardware Dealers Mutual Fire Ins. Co. v. Glidden Company, 284 U. S. 151, 158.
Snyder v. Massachusetts, 291 U. S. 97, 105.

It follows that all of the matters of procedure in respect of which appellant asserts the act is deficient are within the power of the state to provide for, regulate, or omit entirely, as it may see fit (subject to possible qualifications in

respect of the right to counsel and witnesses, to be discussed later). With the exception of the right to a jury trial, none of these points was passed upon or even expressly mentioned by the state supreme court in its decision, and how far they were urged by appellant upon the attention of the court does not appear from the record. The court said (205 Minn. page 556; Record page 27):

> "The final argument of the relator is that the act denies a 'patient' a jury trial and fails to secure certain other rights of defendants in criminal proceedings. Since the proceedings here in question are not of a criminal character, we will confine ourselves to consideration of relator's right to a jury trial."

The court then proceeded to develop its conclusion that there was no constitutional right to a jury trial in proceedings under the act, but said nothing further about the other procedural points. The effect was to hold that there was no violation or denial of appellant's rights with respect to any of these points. This is conclusive upon appellant. The matters in question being entirely within the jurisdiction of the state, he is precluded from raising them here, subject to the qualifications as to counsel and witnesses hereinafter noted.

However, in order to meet any questions that may arise as to the several points mentioned, it may be proper to discuss them briefly.

(1) *Jury Trial.*

A jury trial is not a requisite of due process under the Fourteenth Amendment.

Walker v. Sauvinet, 92 U. S. 90.

Hardware Dealers Mutual Fire Ins. Co. v. Glidden Company, supra, p. 158.

Snyder v. Massachusetts, supra, p. 105.

Palko v. Connecticut, 302 U. S. 319, 323-325.

Hence the decision of the state supreme court that there was no constitutional right to a jury trial in proceedings under the act is conclusive.

(2) *Right to Counsel.*

The right to the aid of counsel is incident to a fair hearing, hence is a requisite of due process in both civil and criminal cases.

Powell v. Alabama, 287 U. S. 45, 69.

With respect to the further question as to the right to have counsel appointed by the court. the court in that case held as follows (page 71):

> "All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; * * *. In a case such as this, whatever may be the rule in other cases, the right to have counsel appointed,

when necessary, is a logical corollary from the constitutional right to be heard by counsel."

And further (page 73):

"The duty of the trial court to appoint counsel under such circumstances is clear, as it is clear under circumstances such as are disclosed by the record here; and its power to do so, even in the absence of a statute, can not be questioned. Attorneys are officers of the court, and are bound to render service when required by such an appointment. See Cooley, Const. Lim., *supra,* 700 and note."

Although proceedings under the act in question are not criminal (*supra* p. 34), they involve personal liberty, and it may be conceded that the patient in such a case should have the benefit of every right of due process that would be given under the Fourteenth Amendment in a criminal case of like gravity. As before pointed out, the act in question goes as far as could be expected in authorizing appointment of counsel for a patient at public expense (*supra* p. 30; appellant's brief p. 3). It is to be presumed that the probate court in any particular case will take whatever action is necessary and within its power to effectuate the provisions of the law and secure to the patient the full benefit of the rights which are accorded him. If the court should fail to do so, it would be error for which ample remedies are available.

(3) *Compulsory Process for Witnesses.*

It has been held that compulsory process for securing the attendance of witnesses is not a requirement of due process under the Fourteenth Amendment in a civil proceeding.

Missouri ex rel. Hurwitz v. North, supra.

So far as we can discover, the question whether the Fourteenth Amendment would require compulsory process for witnesses in a criminal case or other case involving personal liberty has never been decided by this court. However, conceding that the same principles ought to apply to compulsory process for witnesses as obtain with respect to the appointment of counsel, it is evident that the act does all that could be desired in this respect (*supra* p. 30; appellant's brief p. 3). The fears apparently entertained by appellant that these provisions are ineffectual are quite groundless. In Minnesota the probate court is a court of record created by the state constitution, Article VI, Section 7, and vested by law with the same general powers to issue subpoenas, compel attendance of witnesses, and punish for contempt as are usually possessed by courts of general jurisdiction (Mason's 1938 Supplement, Section 8992-2). A subpoena may be served by any person, not necessarily by an officer (Mason's Statutes 1927, Section 9810). Failure of the person subpoenaed to attend is punishable by any court of record as contempt of court (Id. Section 9812), and the court may also issue an attachment to bring the witness before it (Id. Section 9813). It is to be presumed that the court would exert its powers so far as might be necessary to secure any available material witnesses desired in behalf of the patient in a particular case.

(4) *Privacy of Hearing.*

We are unable to find any authority for the proposition that it is necessary that a hearing be open to the public in order to comply with the due process requirements of the Fourteenth Amendment. At any rate, privacy of hearings is not mandatory under the act, which merely authorizes the probate judge, at his discretion, to exclude the general public (appellant's brief p. 3). This is obviously, in large part at least, for the benefit of the patient. The patient has the right to have his counsel and witnesses at the hearing. Should he or his counsel request that any others be permitted to attend, it would no doubt be granted by the court. As under the preceding headings, it is to be presumed that the court will have due regard for the rights of the patient, constitutional or otherwise, and that any errors that might be committed in that respect would be subject to correction by the proper remedies.

(5) *Place of Hearing.*

The act provides that the hearing shall be held in the county in which the patient has his settlement, that is, his permanent residence, or is present, (*supra*, p. 29; appellant's brief p. 3). Appellant's complaint is that a patient may be forced to submit to a hearing at a place remote from his residence. If he betook himself to such a place and there became a potential menace to society, he could hardly complain of being examined there, any more than one charged with crime could complain of being tried in the county where the crime was committed. If it should appear in any

case that holding the examination in a county remote from the patient's residence would deprive him of a fair hearing, due to inability to secure witnesses or other cause, the court of that county would undoubtedly have authority, upon application of the patient or his counsel, to direct that the petition be transmitted for filing and for further proceedings in the county of the patient's settlement. If it should appear that any rights of the patient were violated in this connection, it would be subject to redress through the proper remedies, as in the other cases mentioned.

(6) *Adequacy of Examing Tribunal.*

Appellant fears that the doctors appointed on the examining tribunal may not be equal to the occasion, and that the services of qualified psychiatrists will be lacking (Brief page 58). The examining board, consisting of the probate judge (or, in case of his disability, the court commissioner), and two licensed doctors of medicine, is composed in the same way that boards have been composed in insanity cases for many years (Mason's Statutes, 1938 Supplement, Section 8992-175, *post* p. 55). It is not out of place to say that the State of Minnesota is widely known for its progressive and humane methods of dealing with the insane and other defectives. Competent psychiatrists and other specialists from the state hospitals in various parts of the state, the University of Minnesota Medical School, and its affiliate, the Mayo Clinic, may be and frequently are called by the probate courts to give expert testimony and advice in cases where no qualified men are available locally. However, it is probable that in most places there would be at hand experienced medical practitioners, with a considerable work-

ing knowledge of nervous and mental diseases derived from their regular medical education and experience, who would be quite competent to read the signs of psychopathic personality.

It is elementary that a competent tribunal to hear and determine is a requisite of due process. However, the composition of the tribunal (no jury trial being required) is entirely subject to the control of the state. See *Simon v. Craft* and other cases cited in the discussion of the requisites of due process, *supra* p. 34, also under jury trial, *supra* p. 36.

The probate court is certainly an adequate tribunal. It is to be presumed that the court will call to its aid competent medical assistants, and that they will discharge their duties with due regard for the rights of the patient. Their errors, if any, are subject to applicable remedies, as before stated.

Appellant considers that with respect to procedure and protection of personal rights the Minnesota act in question compares unfavorably with the Michigan law, Act No. 196, Public Acts 1937, which was declared invalid by the Michigan Supreme Court, and with the Illinois act of 1938, Jones' Illinois Annotated Statutes, Section 37.665 (4) (appellant's brief pp. 55-56). It is apparent that appellant in making this comparison has overlooked many important provisions of the act in question and other Minnesota laws to which attention has been called in this brief, and that the Minnesota act goes much further than either of the other two acts in safeguarding personal rights.

The Michigan act was held invalid as an amendment to an existing criminal law upon grounds which have no

bearing here. It is significant that the original provision upon which the amendment was grafted was passed in 1927, indicating a recognition by the Michigan legislature at that time of the need for special treatment of psychopathics, sex degenerates, and sex perverts.

People v. Frontczak, 286 Mich. 51, 281 N. W. 534.

V.

PRIVILEGES AND IMMUNITIES OF CITIZENS.

Appellant contends that by adoption of the laws relating to insanity, the act operates to impose upon one who is found to have a psychopathic personality all the disabilities attaching to insane persons (Brief page 58). Appellant argues that with respect to certain rights claimed to be thus affected the act violates the privileges and immunities clause of the Fourteenth Amendment. (Brief page 60-61).

Appellant's suggestion that these disabilities are imposed upon one who is merely alleged to have a psychopathic personality (Brief page 59) is untenable, being based upon a wholly unreasonable construction of the act.

The disabilities mentioned by appellant involve the following matters:

(1) Right to vote,
(2) Marriage,
(3) Competency to testify as witness,
(4) Jury service,
(5) Divorce,
(6) Competency to make wills,

(7) Qualification as partner,
(8) Right to sue or be sued,
(9) Right to contract,
(10) Subjection to authority of guardian.

With respect to most, if not all, of these matters, the suggested disabilities do not result ipso facto from mere commitment for insanity, and would not result upon a finding of a psychopathic personality. Under the Minnesota laws, a commitment for insanity does not automatically subject the insane person to guardianship, nor make him incompetent in the legal sense for all purposes, although it may for some purposes, as hereinafter pointed out. Under the probate code, in order to have a person declared legally incompetent and a guardian appointed, separate proceedings must be instituted, with notice and hearing, wherein proof of the facts necessary to support the petition must be made independently of any proceedings which may have been had for commitment of the person concerned to an institution. (Mason's 1938 Supplement, Sections 8992-129 to 8992-134).

Moreover, it is by no means certain that the state courts would construe the act in question as imposing upon persons with psychopathic personalities all the disabilities pertaining to insane persons. It is altogether possible that the courts, applying the well settled rules of statutory construction, would hold that the purposes of the psychopathic personality act were fully accomplished by adoption of the laws relating to the commitment, detention, and care of insane persons, and that it was not the intention of the legislature to impose any disabilities other than those which would necessarily result from confinement in a state hospi-

tal. Even if the courts did not go thus far in the matter of construction, it is at least to be presumed that so far as fairly permissible they would construe the act so as to avoid infringing any constitutional rights, and would make necessary exceptions in order to accomplish that result.

Jacobson v. Massachusetts, and other cases cited, *supra,* page 18.

None of these points was passed upon or even inferentially referred to in the opinion of the Minnesota Supreme Court in the instant case. So far as appears therefrom or from the remainder of the record the contention that there was a violation of the privileges and immunities clause, though mentioned in the initial petition for writ of prohibition, was not urged upon the attention of the state supreme court. We are therefore in the dark as to how that court would construe the law in an actual case where it was claimed that some privilege or immunity guaranteed by the constitution was infringed. So far none of appellant's personal rights has been violated. He has not even been arrested. We do not seek to foreclose consideration of any material question, but so far as appellant's privileges and immunities covered by the Fourteenth Amendment are concerned, the case is moot and the court might properly refuse to consider any issues raised thereunder.

Dahnke-Walker Co. v. Bondurant, 257 U. S. 282, 289.
Northwestern Bell Telephone Co. v. Neb. State Ry. Comm'n., 297 U. S. 471, 473.

Even if it should be held that constitutional privileges and immunities might be infringed in consequence of a commitment under the act, it would not necessarily invali-

date the act in respect of its main purposes, the examination, confinement, and care of persons found to have psychopathic personalities. A statute may be held invalid as to one set of facts yet valid as to another.

Dahnke-Walker Co. v. Bondurant, supra, p. 289, and cases cited.

Du Pont v. Commissioner, 289 U. S. 685, 688.

Snyder v. Massachusetts, 291 U. S. 97, 116.

If the foregoing propositions are correct, it is unnecessary to proceed further on this branch of the case. However, in case the court should deem it material to consider the effect of the act in question on privileges and immunities under the Fourteenth Amendment, we submit that none of the rights which appellant claims would be affected except the right to vote for national officers and the right to do business and make contracts is within the privileges and immunities clause, and that if any right covered by that clause is affected by the act, it is not to such degree as would amount to an abridgment in violation of the constitution.

The privileges and immunities protected by the Fourteenth Amendment are only those that arise from the constitution and laws of the United States and not those that spring from other sources.

Slaughter Cases, 16 Wall. 36, 74.

Maxwell v. Dow, 176 U. S. 581, 587.

Twining v. N. J., 211 U. S. 78, 93.

Colgate v. Harvey, 296 U. S. 404, 429.

Breedlove v. Suttles, 302 U. S. 277, 283.

Palko v. Conn., 302 U. S. 319, 329.

In these and other cases this court has defined the field of application of the privileges and immunities clause, but so far as we can discover it has never held that any such rights as those mentioned by appellant are within that field except the right to vote for national officers and, within certain limits, the right to do business and make contracts. The privileges and immunities clause was given what is regarded as its broadest construction in the case of Colgate v. Harvey, supra, where it was held to protect to a limited extent the right of a citizen residing in one state to make loans in another, as an attribute of national citizenship. However, the decision in that case did not conflict with the rule elsewhere recognized that the privileges and immunities protected by the Fourteenth Amendment are subject to reasonable regulation by the states. If this were not the rule a serious impairment of the sovereignty of the several states would result, for they would be powerless to regulate within their borders many matters which are essential to the proper administration of state government and which have always been regarded as subject to state jurisdiction. The further the privileges and immunities clause is extended, the greater would be the impairment of state sovereignty.

It would seem that no more need be said on the subject of privileges and immunities, but we submit the following discussion, for such consideration as the court may wish to give, showing that the effect of the act in question on the various personal rights mentioned by appellant is not nearly so serious as he supposes.

(1) *Right to Vote.*

The right to vote for national officers depends, under Article 1, Section 2, of the Federal Constitution, upon the qualifications prescribed by each state, through its constitution or laws, for electors of the most numerous branch of the state legislature.

Ex parte Yarbrough, 110 U. S. 651, 663.
Breedlove v. Suttles, 302 U. S. 277, 283.

In Minnesota the qualifications for voting are prescribed by Article 7 of the State Constitution. The constitutional provisions are complete and exclusive, leaving the legislature no control over the qualifications for voting. The state constitution, in Section 2 of Article 7, provides that no person under guardianship, or who may be non compos mentis or insane, shall be entitled to vote at any election in the state. So far as we can discover the Minnesota Supreme Court has never construed this provision. Whether the court would hold it broad enough to cover a person with a psychopathic personality is a matter of conjecture. However, it could hardly be said that to deny the franchise to one who had been found to be a chronic and dangerous sex pervert, requiring confinement for his own benefit and for the protection of society, would be so unreasonable as to abridge the privileges and immunities of citizens in violation of the Fourteenth Amendment to the Federal Constitution.

(2) *Marriage.*

This court recognizes that the states have a large measure of control over the marriage relation.

Maynard v. Hill, 125 U. S. 190, 205.

Haddock v. Haddock, 201 U. S. 562.

In Minnesota marriage between persons either one of whom is epileptic, an imbecile, feeble-minded, or insane is forbidden (Mason's Statutes 1927, Section 8564). Whether the psychopathic personality act would operate to extend this prohibition to persons committed thereunder is purely a matter for determination by the state courts. There is no ground for supposing that a statute so providing would violate the privileges and immunities clause of the Fourteenth Amendment.

(3) *Competence as Witness.*

Mason's Minnesota Statutes 1927, Section 9814, provides:

"Every person of sufficient understanding . . . may testify in any action . . . except as follows:

* * * * *

6. * * * persons of unsound mind."

Id. Section 9819 provides:

"Where an infant or person apparently of weak intellect is produced as a witness the court may examine him to ascertain his capacity * * *."

It is well settled in Minnesota that the test of mental capacity to testify is whether the witness is possessed of such an understanding as enables him to retain in memory

the events of which he has been a witness, and whether he understands the nature and obligation of an oath. If a person meets these requirements, the fact that he may be insane or feebleminded will not disqualify him as a witness.

Cannady v. Lynch, 27 Minn. 435, 8 N. W. 597.
State v. Hayward, 62 Minn. 474, 494, 65 N. W. 63.
State v. Prokosch, 152 Minn. 86, 187 N. W. 971.

This court has approved the same principle.

District of Columbia v. Armes, 107 U. S. 519.

It is clear that commitment under the psychopathic personality act would not of itself render a person incompetent to testify as a witness.

(4) *Jury Service.*

Persons "not of sound mind or discretion" are disqualified from serving as grand or petit jurors in Minnesota (Mason's Statutes 1927, Sections 10,605 and 9,459). A grand juror may be challenged on the ground that he is insane (Id. Section 10,615). A petit juror may be challenged on the ground of "unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror." (Id. Sections 10,736 and 9,294).

The same rules apply here as with respect to witnesses, *supra.*

(5) *Divorce.*

In Minnesota incurable insanity, attended by regular treatment therefor and confinement in an institution for at least five years, is a ground for divorce (Mason's Statutes, 1938 Supplement, Section 8585). Whether such ground exists is a matter for judicial determination in each case. The same principles as outlined under Marriage, supra, are applicable here.

(6) *Testamentary Capacity.*

Mason's Minnesota Statutes, 1938 Supplement, Section 8992-34, provides:

> "Every person of sound mind . . . may dispose of his estate . . . by his last will in writing * * *"

It is well settled in Minnesota that one who comprehends his relation to those who would naturally have claims on his bounty, the extent and situation of his property, and the effect of the will in disposing of it, and is able to hold these things in his mind long enough to form a rational judgment concerning them, is competent to make a will.

In re Estate of Jernberg, 153 Minn. 458, 190 N. W. 990.

This is true notwithstanding the testator may be mentally deficient in other respects. The Minnesota Supreme Court has even held that a person who had been committed to guardianship as feeble-minded but who possessed the

qualifications above stated was competent to make a will. Woodville v. Morrill, 130 Minn. 92, 153 N. W. 131.

Obviously a finding of psychopathic personality would not be self-sufficient to prove that a testator was incompetent.

(7) *Qualification as Partner.*

One's capacity to become a partner would, of course, depend on his capacity to contract, discussed below.

As to dissolution of partnership, Mason's Minnesota Statutes 1927, Section 7415, provides:

> "On application by or for a partner, the court shall decree a dissolution whenever:
>
> (a) a partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind * * *"

Whether this would affect a person with a psychopathic personality would be a judicial question in each case, as in case of the other matters above mentioned.

(8) *Right to Sue or Be Sued.*

(9) *Right to Contract.*

These two subjects are related and subject to the same general legal principles. There are no pertinent statutory provisions aside from those of special application, such as concerning divorce and partnership, *supra*,

and Mason's Statutes 1927, Sections 9169 and 9170, authorizing appointment of a guardian ad litem for an insane person.

As before shown (supra p. 43), a commitment for any form of mental deficiency in Minnesota does not, *ipso facto*, render a person incompetent to manage his property or affairs or subject his estate to guardianship. Separate proceedings are necessary for that purpose.

It is well settled in Minnesota that the contract of an insane person is not void but voidable, that a person may be insane on some subject and still be able to manage his property and affairs, and that commitment to a state institution is not evidence of incapacity.

Knox v. Haug, 48 Minn. 58, 61, 50 N. W. 934.

Schultz v. Oldenburg, 202 Minn. 237, 243, 277 N. W. 918.

It follows that commitment for psychopathic personality would not *ipso facto* affect one's capacity to contract or to become a party to a legal action.

(10) *Guardianship.*

As before shown, commitment for mental deficiency in Minnesota does not *ipso facto* subject a person to guardianship for any purpose except confinement and care by the state pursuant to the commitment (supra p. 43).

CONCLUSION.

The Minnesota psychopathic personality act, Laws 1939, Chapter 369, is not unconstitutional or invalid in respect of any of the points raised by appellant. The act should be sustained as a valid exercise of the police power in the interests of the persons affected and of society. The judgment of the state supreme court should be affirmed.

Respectfully submitted,

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APPENDIX.

MINNESOTA STATUTES RELATING TO INSANITY.

Mason's Minnesota Statutes, 1938 Supplement.

(Comprising sections amended after Mason's Minn. Statutes 1927)

8992-173. **Voluntary hospitalization.**—Any insane, inebriate, feebleminded, or epileptic person desiring to receive treatment at a state institution may be admitted upon his own application, in such manner and upon such conditions as the state board of control may determine. During the time of such treatment and until the expiration of three days after such person in writing demands his release, the superintendent of such institution is authorized and empowered to detain him as though he had been duly committed. If any such person demands his release, the superintendent if he deems such release not to be for the best interest of such person, his family, or the public, shall file a petition for commitment in the probate court of the county wherein such institution is located, within three days after such demand.

8992-174. **Institution of proceedings.**—Unless otherwise indicated by the context, the word "patient" as used in this article means any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the appli-

ERRATA.

Appellee's brief, State of Minn. ex rel. Pearson v. Probate Court

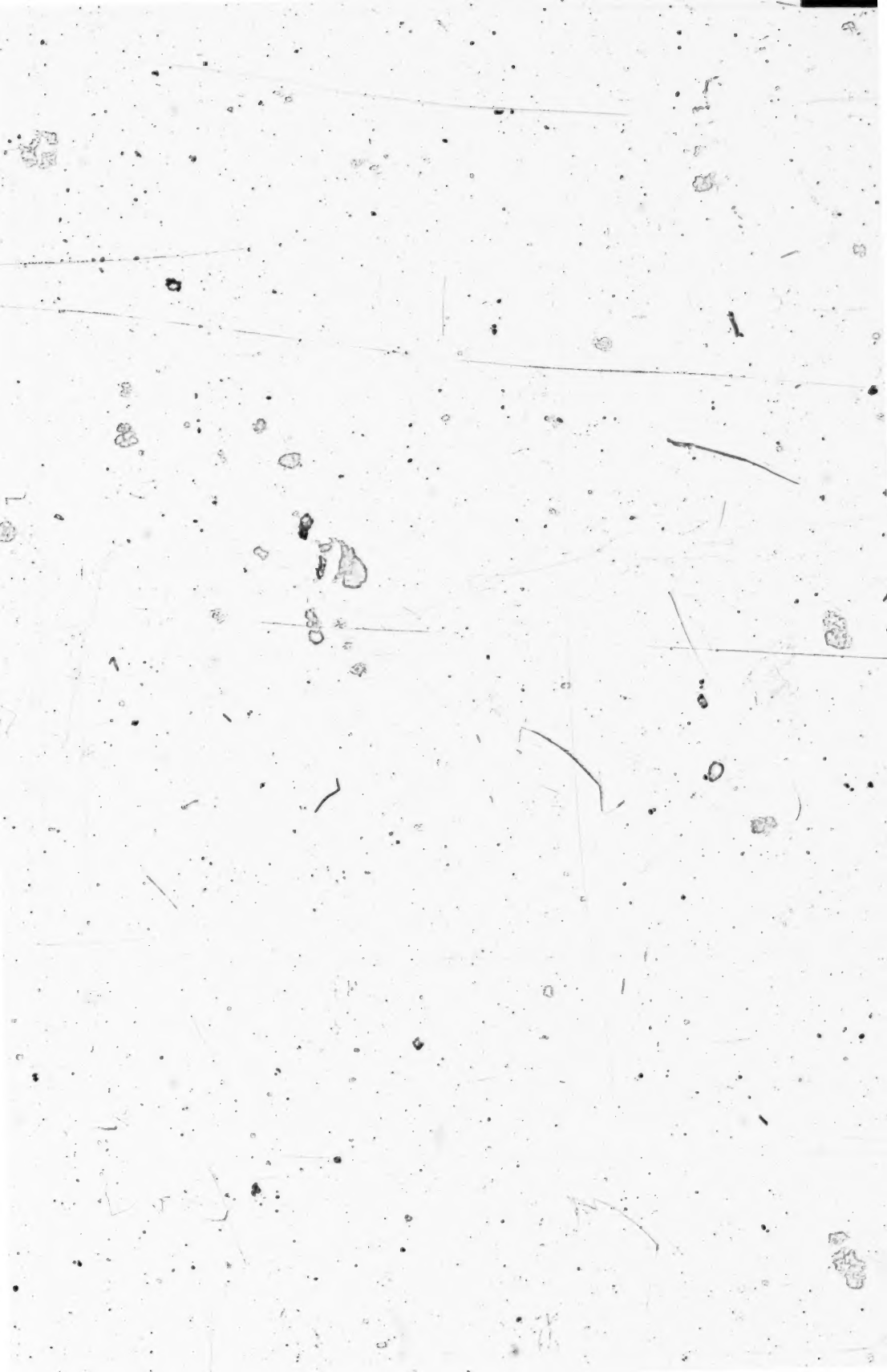
On pages 54-55, in lieu of Mason's Minnesota Statutes, 1938 Supplement, Sec. 8992-174, insert the following amended section from Laws 1939, Chapter 270, Section 10, wherein all the former provisions were retained, with the insertion of the matter in italics.

Sec. 10. **Institution of proceedings.**—Laws 1935, Chapter 72, Section 174 is hereby amended to read as follows:

"Unless otherwise indicated by the context, the word 'patient' as used in this article means any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending.

The person, hospital, or institution ordered by the court to make such apprehension, conveyance, or confinement, may execute the order on any day and at any time thereof, by using all necessary means, including the breaking open of any door, window or other part of the building, vehicle, boat or other place in which the patient is located, and the imposition of necessary restraint upon the person of such patient.

Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto."



cation. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending. Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto.

8992-175. **Examination.**—The patient shall be examined at such time and place and upon notice to such persons and served in such manner as the court may determine. If he be obviously inebriate, feebleminded, or epileptic, and if the county attorney consent thereto in writing, the examination may be made by the court; otherwise the court shall appoint two duly licensed doctors of medicine, or in feebleminded proceedings two persons skilled in the ascertainment of mental deficiency, to assist in the examination. Upon the filing of a petition for the commitment of a feebleminded or epileptic patient, the court shall fix the time and place for the hearing thereof, of which ten days' notice by mail shall be given to the

state board of control, and to such other persons and in such manner as the court may direct.

The examiners and the court shall report their findings upon such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board. The court shall determine the nature and extent of the property of the patient committed and of the persons upon whom liability is imposed by law for his care and support, making such findings upon such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board.

8992-176. **Commitment.**—If the patient is found to be insane or inebriate, the court shall issue to the sheriff or any other person a warrant in duplicate, committing the patient to the custody of the superintendent of the proper state hospital, or to the superintendent or keeper of any private licensed institution for the care of inebriates or insane persons; provided, however, that such patients are required to pay the necessary hospital charge. If such patient be entitled to care in any institution of the United States in this state, such warrant shall be in triplicate, committing him to the joint custody of the superintendents of the proper state and federal institution. If such federal institutions be unable or unwilling to receive the patient at the time of commitment, he subsequently may be transferred to it upon its request. Such transfer shall discharge his commitment to the state institution and constitute a sole commitment to the federal institution.

If the patient is found to be feebleminded or epileptic, the court shall appoint the State Board of Control guard-

ian of his person and commit him to its care and custody.

Whenever a defendant in a criminal proceedings has been examined in the probate court, pursuant to an order of the state or federal district court, the probate court shall transmit its findings and return the defendant to such district court, unless otherwise ordered. A duplicate of the findings shall be filed in the probate court but there shall be no petition, property or report, nor commitment, unless otherwise ordered.

8992-177. **Payment of fees, etc.**—In each proceedings the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law, to each examiner the sum of five dollars per day for his services and fifteen cents for each mile traveled, to the person to whom the warrant of apprehension is issued the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself, and of authorized assistants, and to the person conveying the patient to the place of detention the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself and of authorized assistants, and to the patient's counsel when appointed by the court, the sum of ten dollars per day. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof.

Whenever the settlement of the patient is found to be in another county, the court shall transmit to the county auditor a statement of the expenses of the apprehension, confinement, examination, commitment, and conveyance to the place of detention. Such auditor shall transmit the same to the auditor of the county of the patient's settle-

ment and such claim shall be paid as other claims against such county. If the auditor to whom such claim is transmitted shall deny the same, he shall transmit it with his objections to the state board of control which shall determine the question of settlement and certify its findings to each auditor. If the claim be not paid within thirty days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.

8992-178. **Release before commitment.**—Before the delivery of the warrant of commitment, the court may release an insane or inebriate patient to any person who files a bond to the State in such amount as the court may direct, conditioned upon the care and safekeeping of the patient; but no person against whom a criminal proceeding is pending or who is dangerous to the public shall be so released.

8992-179. **Release after commitment.**—Any insane, inebriate, feebleminded, or epileptic patient committed to the state board of control or any institution under its control, may be released to any person if such board consent thereto or if a bond to the State be filed with such board in such amount as it may fix, conditioned upon the care and safekeeping of the patient and the payment of all expenses, damages, and other items arising from any act of such patient.

8992-180. **Detention.**—Upon delivery of an insane or inebriate patient to the institution to which he has been committed, the superintendent thereof shall retain the dupli-

cate warrant and endorse his receipt upon the original which shall be filed in the court commitment. Upon such filing, the court shall transmit a copy of the warrant with all endorsements of the state board of control. After such delivery, the patient shall be under the care, custody, and control of such board until discharged by it or by a court of competent jurisdiction; but no patient found by the committing court to be dangerous to the public shall be released from custody by such board or any institution except upon order of a court of competent jurisdiction. Whenever a patient is paroled, discharged, transferred to another institution, dies, escapes, or is returned, the institution having charge of the patient shall file notice thereof in the court of commitment.

Upon commitment of a feebleminded or epileptic patient, the state board of control may place him in an appropriate home, hospital, or institution, or exercise general supervision over him anywhere in the state outside any institution through any child welfare board or other appropriate agency thereto authorized by said board of control.

8992-181. **Commissioner may act.**—Whenever the probate judge is unable to act upon any petition for the commitment of any patient, the court commissioner may act in the place of such judge.

8992-182. **Malicious petition.**—Whoever for a corrupt consideration or advantage, or through malice, shall make or join in or advise the making of any false petition or report, or shall knowingly or wilfully make any false representation for the purpose of causing such petition or report to be made, shall be guilty of a felony and punished

by imprisonment in the state prison for not more than one year or by a fine of not more than five hundred dollars.

8992-186. **Petition.**—Every application shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or in the statement of facts in any petition shall invalidate any proceedings.

8992-143. **Restoration to capacity.**—Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein

ERRATA.

Appellee's brief, State of Minn. ex rel. Pearson v. Probate Court

On pages 60-61, in lieu of Mason's Minnesota Statutes, 1938 Supplement, Sec. 8992-143, insert the following amended section from Laws 1939, Chapter 270, Section 8, wherein all the former provisions were retained, with the insertion of the matter in italics.

Sec. 8. **Restoration to capacity.**—Laws 1935, Chapter 72, Section 143 is hereby amended to read as follows:

"Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

In proceedings for the restoration of an insane or inebriate person, the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each doctor so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred."

restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred.

4523. **Patients may be paroled in certain cases.**—The superintendent, whenever he deems it advisable that a patient should return home or remain away from the institution on trial, may allow him to be absent on parole for a period not exceeding one year. The order of commitment shall remain in force until he is legally discharged, and he may be recalled at any time.

4524. **Discharge of patients.**—Such superintendent may discharge any patient certified by him to be recovered, unless charged with or convicted of some criminal offense. In all other cases, patients shall be discharged only by the board of control. Whenever the superintendent recommends the discharge of a patient, improved or unimproved, he shall state his reasons therefor.

FILE COPY

IN THE

Supreme Court of the United States

October Term 1939.

No. 394.

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,

Appellant,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, AND HONORABLE MICHAEL F. KINKEAD, JUDGE OF SAID COURT OF RAMSEY COUNTY,

Appellee.

APPELLEE'S SUPPLEMENTAL BRIEF.

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SUBJECT INDEX.

TABLE OF CASES CITED.

OTHER AUTHORITIES.

STATUTES CITED.

Minnesota Session Laws 1939

Chapter 4	3	
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Chapter 369, Section 2	4	
Chapter 400	12	
Chapter 442	3	

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Appellant,

vs.

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Appellee.

APPELLEE'S SUPPLEMENTAL BRIEF.

This supplemental brief is not intended to extend the argument upon matters already covered in the main briefs, but simply to present and comment upon the facts upon some new points raised in appellant's reply brief. In view of references in that brief to certain Minnesota statutes and to the report of the Minnesota committee of psychiatrists and accompanying letters, we have had the same printed in full in the appendix hereto.

AMENDMENTS TO PROCEDURAL STATUTES RELATING TO INSANITY CASES.

Appellant in his reply brief, pages 1 and 2, calls attention to the fact that two sections of the Minnesota statutes relating to insanity cases, referred to in our main brief, Mason's 1938 Supplement, Section 8992-174, relating to institution of proceedings for commitment in insanity cases (appellee's main brief pp. 4 and 54), and Section 8992-143, relating to proceedings for restoration to capacity (Id. pp. 5 and 60), were amended by Laws 1939, Chapter 270, Sections 10 and 8, respectively. Through oversight these amendments were not included in the appendix of our main brief. We have supplied errata sheets for insertion therein, giving the full text of both amended sections and showing the new matter in italics. See also appendix hereto, *post* p. 15. It will be seen that in both sections the former provisions were carried forward intact, the only change being the insertion of some new matter in each section which in no way interfered with the operation of the former and still existing provisions, so far as they may be applicable to proceedings in psychopathic cases. Appellant's statements as to the ending of the life or existence of these sections are therefore misleading, because the former provisions, though under different sections numbers, are still in full force.

THE MINNESOTA STATUTE SYSTEM.

In view of the foregoing and of some further statutory references to be made, an explanation of the present Minnesota statutory system may be helpful. The last complete compilation of the general statutes is Mason's Minnesota Statutes of 1927. Mason's 1938 Supplement is a compilation of the session laws enacted by the legislature since 1927 and before the regular session of 1939, excluding acts of special or local application. Both Mason's 1927 Statutes and the 1938 Supplement have been made official by acts of the legislature (Laws 1929, Chapter 6; Mason's 1938 Supplement, Section 10950-4; Laws 1939, Chapter 4), and the rules of the legislature provided for making reference thereto in amendatory acts (1939 Legislature, Senate Rule No. 34, House Rule No. 4a, Legislative Manual, 1939, pages 116, 121). However, the amendatory act above mentioned, Laws 1939, Chapter 270, did not refer to the 1938 Supplement, but to Laws 1935, Chapter 72, a prior act in which the provisions being amended had been embodied. That act was a complete codification of Minnesota probate law, officially known as the Minnesota Probate Code. It appears in Mason's 1938 Supplement as Sections 8992-1 to 8992-200, inclusive. The digits following the hyphen in each case correspond with the original code section numbers.

We may say in passing that the chaotic condition of the Minnesota statutes, of which this is an example, is in process of being remedied under the permanent statutory revision system adopted by Laws 1939, Chapter 442.

RELEASE OR DISCHARGE OF PSYCHOPATHIC PATIENTS.

Section 2 of the act here in question, Laws 1939, Chapter 369, adopted by reference for the purposes of procedure in psychopathic cases the laws relating to insanity cases. The effect of this has been discussed at length in the main briefs of both parties. Appellant contended in his main brief that the result was to draw in not only the procedural provisions of the laws relating to insanity cases but also all provisions imposing disabilities upon insane persons (appellant's main brief, p. 58). In his reply brief he changes front and insists that the provisions for release or discharge cannot be applied to psychopathic cases, and that therefore one found to have a psychopathic personality must be committed to an asylum for the dangerous insane until released by death (appellant's reply brief, pp. 7-10). It is the view of the attorney general that all the provisions for the release or discharge of persons found dangerously insane, which have frequently been invoked by inmates of hospitals desiring to be released and by the state authorities desiring to release them, would be applicable to a psychopathic case (appellee's brief, p. 27). However, we submit that the question of right to release or discharge is not at issue here, and cannot be made an issue until the Minnesota courts have construed and applied the law in an actual case where a patient committed under the act has sought his release. Appellant cannot raise this issue, since he has not yet been committed.

BAIL.

The considerations discussed under the preceding heading apply with equal force to the question as to the right of a psychopathic patient to bail pending hearing or appeal (appellant's reply brief, p. 2), which was covered in appellee's main brief, pages 26-27.

COMPULSORY PROCESS FOR WITNESSES.

Appellant in his reply brief, pages 14-16, enlarges upon his previous contention that provision for compulsory process for witnesses for a psychopathic patient is inadequate (see appellant's main brief, p. 57). Appellant now says that the weakness of the law in this respect is that it fails to say expressly that the patient may have the sheriff serve his subpoenas free of charge. In addition to what we said on this subject in our main brief, pages 30-31, 38, we submit that there is no authority for the proposition that the Fourteenth Amendment requires the state to pay the cost of serving subpoenas for a person under examination. It is sufficient if the state makes available to him its process, which may be served by any person, with penalties for disobedience attached. However, as we construe the law, it provides for payment of the cost of serving witnesses in behalf of the patient as well as other witnesses, no distinction being made between them. At any rate, this is a matter for determination by the Minnesota courts in the first instance. An individual cannot raise it here unless he comes up with an actual case in which his asserted rights have been denied.

APPELLATE PROCEDURE.

Appellant in his reply brief, page 2, questions the effect in psychopathic cases of certain provisions of the Minnesota probate code relating to appeals in insanity cases. Considering that no issue as to the right of appeal was presented, we did not discuss that matter in our main brief. We merely called attention to the provisions which we deemed applicable (appellee's main brief, pp. 4-6), but did not print them in the appendix to our main brief. However, in view of the statements made by counsel for appellant, we have printed the provisions in question, Mason's 1938 Supplement, Sections 8992-164 (14) to 8992-171, inclusive, in the appendix hereto, *post* pp. 17-20. Appellant thinks that by mentioning certain of these sections, 8992-166, 8992-167, 8992-169, and 8992-170, the psychopathic personality act excludes the others (Act, Section 2; appellant's main brief, p. 4). This is untenable. There is no express limitation or exclusion in the language of the act. It merely says that the patient may appeal to the district court *upon compliance with the provisions* of the specified sections. The four sections mentioned contain not only the requirements with which an appellant must comply upon an appeal, but other provisions governing appellate procedure. Further essential provisions governing appellate procedure are found in the other accompanying sections. Section 8992-164 (14) allows an appeal from an order granting or denying restoration to capacity. Section 8992-165 governs the venue of all appeals. Section 8992-168 provides for suspension of operation of the order appealed from until determination of the appeal. Section 8992-171 provides for entry of judgment for costs, without which

the requirement of a bond under Section 8992-166 would be futile. There is no question but that all of those provisions would be applicable in a psychopathic case, so far as pertinent, under the general reference clause at the beginning of Section 2 of the act, unless excluded by the express mention of the four particular sections. It is evident that the sole purpose of mentioning those four sections was to direct the attention of interested parties to the provisions which must be complied with in order to perfect and prosecute an appeal. No intention to exclude other material provisions is manifest. Under such circumstances the rule that the mention of certain things excludes others has no application.

At any rate, there is no issue here as to the right of appeal. The right of appeal might be pertinent if some other constitutional right essential to due process had been omitted in the provisions for procedure in the probate court but provided for upon appeal. Such is not the case here.

EXAMINING TRIBUNAL.

Appellant in his reply brief, page 5, dwells at length upon the incompetence of the examining tribunal. To what we have said on this subject in our main brief, pages 40-41, we may add that the requisites of due process under the Fourteenth Amendment do not include special qualifications for judges or others who act upon tribunals. All that is required is that there be a regular tribunal in some form established and acting under authority of law. In the absence of constitutional provisions, the composition of a tribunal and the qualifications of its members are for the legislature to prescribe.

Reetz v. Michigan, 188 U. S. 505, 507.

The task of the examining board under the psychopathic personality act, composed of the probate judge or court commissioner and two licensed physicians, is no more difficult than that of the corresponding board in an insanity case, which is composed in exactly the same way.

MINNESOTA COMMITTEE OF PSYCHIATRISTS.

Appellant in his main brief attacked the act in question on the ground that it was passed hastily and without proper consideration. He compared the Minnesota procedure unfavorably with that of Illinois, where, he pointed out, the legislature had the benefit of the advice of a committee of psychiatrists (appellant's main brief, pp. 9, 10, 13, 54-56). Appellant's counsel made no mention in his main brief of the report of the Minnesota committee of psychiatrists, although it had been published in the House legislative journal, to which he had access, and he had a copy of the report (appellant's reply brief, p. 3). We cannot see that the legislative history of the act in question is material here, but in view of the obviously erroneous impressions which appellant's main brief had given concerning the passage of the act, we deemed it proper to state the facts concerning the work and report of the Minnesota committee of experts in our main brief, pages 20-24, and to refer to such portions of the report as seemed pertinent to the issues. Appellant in his reply brief, pages 3-4, now attempts to discredit the report of the committee as having been prepared hurriedly and without proper study. It seems to us that argument along this line is largely irrelevant. The act in

question must stand or fall on its own provisions, regardless of whether it took a day or a year to prepare them. The Minnesota committee report is pertinent here only in so far as it expresses the recommendations of a group of highly qualified scientists as to the definition of psychopathic personality and the manner in which persons having such personality should be treated. However, in view of the reflections made upon the committee report by appellant's counsel, and in order to give the court access to all the available material, for whatever consideration may be deemed proper, we print herewith (appendix, *post* pp. 20-37) the committee report in full, with the appended documents to which it refers, namely, a statement of medical opinion on problems of sexual abnormality or sex perversions by Dr. J. C. McKinley, Professor of Neuropsychiatry and head of the Department of Medicine, University of Minnesota, and a biography of recent technical journal articles on the problem of the insane and sex criminals, together with a letter written to the Governor in connection with the report by Dr. George B. Vold, Professor of Sociology of the University of Minnesota, chairman of the committee.

Appellant's counsel has made some brief detached quotations from the report and from Dr. McKinley's letter in support of his contentions (appellant's reply brief, pp. 3-4). When these quotations are read with the context from which they were taken, it is apparent that, although the scientists who collaborated in the report conceded the desirability of further study of the broad problem of dealing with mental defectives, they were united in the recommendation for immediate legislative action to provide for the confinement and treatment of persons with psychopathic personality. The legislature adopted in substance all of

the recommendations of the committee requiring immediate action, including the creation of interim committees and the enactment of the act here in question (appellee's main brief, pp. 20-24). The act, however, did not go quite so far as the committee recommended, in that it was limited to sexual psychopathics, whereas the committee's recommendation covered all types.

It is true that the changes which the committee recommended in various sections of the probate code, in order to incorporate the term "psychopathic personality" along with insanity and feeblemindedness, were not made in the exact manner suggested in the report, because that would have been cumbersome and would have caused confusion with other measures already pending in the legislature for amendment of some of the same sections in other particulars. The same result was accomplished without confusion by adopting by reference the laws relating to insanity cases. The procedure in such cases is well understood by the probate judges and court commissioners, even though many of them are not lawyers. We apprehend no such difficulties in understanding or applying the law as appellant's counsel imagines.

There is no foundation for appellant's assertion that the committee recognized that the employment of "licensed doctors" (unless they be active and qualified psychiatrists) is a travesty on justice (appellant's reply brief, p. 4). The committee's recommendation for consideration of the whole question of how best to provide adequate psychiatric service to the courts was contained in the second part of the report, in connection with the proposal for appointment of an interim committee to study and report to the next legislature a unified program for the care of defectives of all

kinds (*post* p. 26). This recommendation was in no sense a qualification of the preceding recommendation for the enactment of a psychopathic personality law. The effect of the committee's recommendation was to use the same board of examiners as had been used for many years in insanity cases, the probate judge or court commissioner and two licensed physicians. Evidently the committee considered that such a board would be quite competent for the purposes of the act. The act as adopted incorporated this recommendation.

Few will deny that there is much room for improvement in the methods of providing expert witnesses for the courts. However, insane people were committed and treated for a great many years before modern psychiatrists arrived on the scene. No reason is apparent why the well-marked characteristics of sex perverts cannot be identified and treated just as readily. As time goes on methods will be improved and better service provided, but there is no reason why society should continue to suffer from the outrages committed by sex perverts until mental specialists can be stationed at every remote county seat. As pointed out in our main brief, page 40, expert service is already available if needed in unusual cases.

DEFINITION OF PSYCHOPATHIC PERSONALITY.

On page 11 of his reply brief appellant says that the attorney general, in drafting the bill for the act in question, added the following proviso because he realized that the act was dangerously vague, indefinite, and uncertain:

> "Provided, that political or religious belief or activity, racial origin, or behavior occurring in connection with a labor dispute or a strike, shall not in any case be considered as a basis for a finding of psychopathic personality."

Appellant reads something into the mind of the attorney general which was not there. As stated in our main brief (p. 23) this proviso was included in the report of the committee of experts, with which the attorney general had nothing to do before it was submitted (*post* p. 23). The proviso bears the earmarks of an effort to forestall opposition from certain groups which sometimes entertain fears that new laws affecting personal liberty will be used against them. Similar reassuring provisos appear in the Minnesota laws creating the state bureau of criminal apprehension (Mason's 1938 Supplement, Section 9950-6), and the state highway traffic patrol (Id. Section 2554, sub. 18 (a) as amended by Laws 1939, Chapter 400). The attorney general included the proviso in the bill because the committee recommended it and because it was approved by the legislative sponsors of the bill, and for no other reason. It is the rule of the attorney general's office in drafting bills to express the sponsors' ideas, not his own, so far as matters of substance are concerned. That rule was followed in this case. Somewhere during the course of the bill through the legislature, the proviso in question was cut out, undoubted-

ly because the legislature realized that it was quite superfluous in a measure dealing with sex perverts. In any event, the point seems quite immaterial.

As appellant says (reply brief, p. 11), the definition of psychopathic personality in the original draft of the bill dealt only with sexual psychopathics, just as it now stands in the act. To that extent it was narrower in scope than the committee's recommendation. This was at the instance of the legislative sponsors of the bill. The complete draft, including the definition of psychopathic personality as now found in the act, was submitted by the attorney general to Dr. Vold, chairman of the Governor's committee, and to Dr. McKinley, of the university medical school, a member of the committee, before the bill was introduced. Both of them unqualifiedly approved it. Apparently it did not occur to them, with their knowledge of the subject, that the definition was susceptible of any such fantastic construction as that placed upon it by appellant in his efforts to show that it is vague, indefinite, and uncertain.

CONCLUSION.

The Minnesota psychopathic personality act is as clear and workable as the time-tested procedure in insanity cases which it adopts. It goes beyond the constitutional requirements in safeguarding the rights of persons under examination. It is a conservative effort to deal in an intelligent way with a difficult social problem by preventing chronic sex perverts from committing ravages and by aiding them to overcome their defects. If this form of solution is impossible because of constitutional barriers, it will be difficult to find an adequate remedy.

Respectfully submitted,

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CHESTER S. WILSON,
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APPENDIX.

MINNESOTA STATUTES RELATING TO INSANITY PROCEEDINGS.

Institution of Proceedings.

The provisions on institution of proceedings included in Mason's 1938 Supplement, Sec. 8992-174, printed in appellee's main brief, pages 54-55, were amended so as to read as follows by Laws 1939, Chapter 270, Sec. 10, wherein all the former provisions were retained, with the insertion of the new matter in italics:

Sec. 10. **Institution of proceedings.**—Laws 1935, Chapter 72, Section 174 is hereby amended to read as follows:

"Unless otherwise indicated by the context, the word 'patient' as used in this article means any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending.

The person, hospital, or institution ordered by the court to make such apprehension, conveyance, or confinement, may execute the order on any day and at any time thereof, by using all necessary means, including the breaking open of any door, window or other part of the building, vehicle, boat or other place in which the patient is located, and the imposition of necessary restraint upon the person of such patient.

Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county

attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto."

Restoration to Capacity.

The provisions on restoration to capacity included in Mason's 1938 Supplement, Sec. 8892-143, printed in appellee's main brief, pages 60-61, were amended so as to read as follows by Laws 1939, Chapter 270, Sec. 8, wherein all the former provisions were retained, with the insertion of the new matter in italics:

Sec. 8. **Restoration to capacity.**—Laws 1935, Chapter 72, Section 143 is hereby amended to read as follows:

"Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

In proceedings for the restoration of an insane or inebriate person, the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each doctor so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred."

APPEALS.

Mason's Minnesota Statutes, 1938 Supplement.

8992-164. **Appealable Orders.**—An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court:

* * *

14. An order granting or denying restoration to capacity.

* * *

8992-165. **Venue.**—Such appeal shall be to the district court of the county of the probate court which made the order, judgment, or decree appealed from, except that an appeal taken from any order, judgment, or decree (other than one determining or refusing to determine venue or transferring or refusing to transfer venue) made before the transfer of venue shall be taken to the district court of the county to which the transfer was made.

8992-166. **Affirmance—Reversal.**—Such appeal may be taken by any person aggrieved within thirty days after service of notice of the filing of the order, judgment, or decree appealed from, or if no such notice be served, within six months after the filing of such order, judgment, or decree. To render the appeal effective (1), the appellant shall serve upon the adverse party or his attorney or upon

the probate judge for the adverse person who did not appear, a written notice of appeal specifying the order, judgment, or decree appealed from, and file in the probate court such notice with proof of service thereof; (2) pay to the probate court an appeal fee of three dollars to apply on the fee for the return; and (3) the appellant, other than the state, the Veterans' Administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, to pay all costs and disbursements, and to abide the order of the court therein.

The notice of the order, judgment, or decree appealed from, the notice of appeal, and the bond if required, shall be served as in civil actions in the district court.

Whenever a party in good faith gives due notice of appeal and omits through mistake to do any other act necessary to perfect the appeal, the district court may permit an amendment on such terms as may be just.

8992-167. **Judgment—Execution.**—When an appeal has been effected, the probate court upon payment of the remainder of its fee, if any, forthwith shall return to the district court a certified transcript of the order, judgment, or decree appealed from, the notice of appeal with proof of service thereof, and the bond if required. If the required fee for the return be not paid within twenty days after the appeal has been effected, the district court may dismiss the appeal. If the appeal be taken under section 164, subsection 10, such transcript shall also contain copies of such other documents, papers, and exhibits as the probate court may consider necessary. The district court may require a further or amended return.

8992-168. **Suspension by Appeal.**—Such appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the district court shall otherwise order. The district court may require the appellant to give additional bond for the payment of

damages which may be awarded against him in consequence of such suspension, in case he fails to obtain a reversal of the order, judgment, or decree so appealed from. Nothing herein contained shall prevent the probate court from appointing special representatives nor prevent special representatives from continuing to act as such.

8992-169. **Trial.**—Within twenty days after perfection of the appeal, the appellant shall file with the clerk of the district court, and serve upon the adverse party or his attorney a clear and concise statement of the propositions, both of law and of fact, upon which he will rely for reversal of the order, judgment, or decree appealed from; within twenty days after such service the adverse party may serve and file his answer thereto and the appellant within twenty days thereafter, may serve and file a reply. If there be no reply, allegations of new matter in the answer shall be deemed denied. Demurrers shall not be permitted. The district court may allow or require any pleading to be amended, grant judgment on the pleadings, or, if the appellant fail to comply with the provisions hereof, dismiss the appeal.

After issues are so formed, the case may be brought on for trial by either party by the filing and service upon the attorney for the adverse party, or if he have none, then upon the clerk for him, of a notice of trial or note of issue, in accordance with the practice in the district court. Thereupon the cause shall be placed upon the calendar, tried, and determined in the same manner as if originally commenced in that court. All appeals other than those from the allowance or disallowance of a claim shall be tried by the court without a jury, unless the court orders the whole issue, or some specific question of fact involved therein, to be tried by a jury or referred.

8992-170. **Affirmance—Reversal.**—Whenever the appellant fails to prosecute his appeal, or the order, judgment, or decree appealed from or reviewed on certiorari is sustained, judgment shall be entered in the district court affirming the decision of the probate court. Upon the filing in the pro-

bate court of a certified transcript of such judgment, the probate court shall proceed as if no appeal had been taken. If the order, judgment, or decree reviewed is reversed or modified, the district court shall remand the case to the probate court with directions to proceed in conformity with its decision. Upon the filing in the probate court of a certified transcript of such judgment, it shall proceed as directed by the district court.

8992-171. **Judgment—Execution.**—The party prevailing on the appeal shall be entitled to costs and disbursements to be taxed as in a civil action. If judgment be rendered against the estate, they shall be an adjudicated claim against it. If judgment be rendered against an appellant other than the State, the Veterans' Administration, or representative appealing on behalf of the estate, judgment shall be entered against the appellant and the sureties on his appeal bond and execution may issue thereon.

GOVERNOR'S LETTER TRANSMITTING COMMITTEE REPORT.

STATE OF MINNESOTA
EXECUTIVE DEPARTMENT
SAINT PAUL

April 4th, 1939

Hon. C. Elmer Anderson
President of the Senate
Hon. Lawrence M. Hall
Speaker of House of Representatives
Gentlemen:

I have the honor to transmit to you herewith the report of the special committee of medical men which I appointed to consider the problem of the insane criminal with special reference to sex criminals.

I know you are all aware of the serious nature and extent of this revolting field of crime, not only in this state, but throughout the nation, and of the unsatisfactory and ineffective manner of handling these cases at the present time.

The committee of ten men of high professional standing were requested to serve on an entirely voluntary basis. They have considered together the problem and in the attached report

make two suggestions that appear to me to be definite and practical and may be a real contribution to the handling of this difficult problem.

The first is an amendment of the laws of the state to make possible the control of the dangerously psychopathic persons without waiting for them to commit a shocking crime, in conjunction with the present methods of controlling the insane, feebleminded and inebriate. And the second suggestion is for the legislature, either through its interim committee or by calling upon interested and qualified groups, such as the State Medical Association and the State Bar Association, to make further interim study of the present handling of these cases and to the codification of the laws on the subject.

The following are the members of the committee who served:

Prof. George B. Vold, Minneapolis, Criminologist at University of Minnesota, Chairman of Special Committee.

Dr. H. B. Hannah, Psychiatrist, 511 Medical Arts Bldg., Minneapolis.

Dr. Fred P. Moersch, Mayo Clinic, Rochester, Minnesota.

Dr. Gordon B. Kamman, Neurologist and Psychiatrist, 1044 Lowry Building, St. Paul.

Dr. George H. Freeman, Superintendent, State Hospital for Insane, St. Peter, Minnesota.

Dr. Alexander G. Dumas, Psychiatrist, Veterans Hospital, Minneapolis, Minnesota.

Dr. L. R. Gowan, Psychiatrist and Neurologist, Duluth, Minn.

Dr. Alex Blumstein, Psychiatrist, General Hospital, Minneapolis, Minnesota.

Dr. M. W. Kemp, Superintendent, State Hospital for Insane, Moose Lake, Minnesota.

Dr. J. Charnley McKinley, University of Minnesota, Minneapolis, Minnesota.

Sincerely yours,

(Signed) HAROLD E. STASSEN,

HES-McN GOVERNOR.

REPORT OF THE GOVERNOR'S COMMITTEE ON THE CARE OF INSANE CRIMINALS AND SEX CRIMINALS.

The problem of the care of insane, defective and psychopathic criminals is an extremely involved one that calls for a careful re-examination of many aspects of our legal and administrative machinery. The care of such criminal offenders is only part of a larger problem of public safety and welfare involved in the care of persons of this type whether criminal or not.

In the case of sex offenses there is the additional complication of a necessarily vague and uncertain difference between criminal acts and behavior that is offensive only in the light of certain standards of morality or propriety. These standards of decency and morality appear to be undergoing considerable change. Thus the bathing suits or sun-suits of today would generally have led to arrests for indecency a few years ago; the display of the more or less undraped human figure so common today in theatrical performances, art exhibits, or even in the dress of the so-called socially elite would not have been permitted a few years ago; while the literature of fiction, drama, and magazine discussion now habitually deals in an open and direct manner with subjects formerly completely tabued. Formal control of behavior in this field becomes, therefore, exceedingly difficult both from the standpoint of legislation and of law enforcement.

This Committee has approached the problem primarily from the standpoint of what action might be desirable on the part of the Legislature. The following two recommendations are submitted for action by the Legislature this session:

FIRST RECOMMENDATION:

A change in the present laws relating to the care of defectives dangerous to the public to make possible the control of dangerously psychopathic persons without having to wait for them to commit a shocking crime.

The principal modification necessary to establish such control would be the following:

(a) Change the general act defining classes of defectives—Session Laws 1917, Chapter 344, Section 1—as follows (new material underlined):[1]

> The word "defective" as used in this act shall include the feeble-minded, the inebriate, *the individual with a psychopathic personality* and the insane. The term "feeble-minded persons" in this act means any person, minor or adult, other than an insane person, who is so mentally defective as to be incapable of managing himself and his affairs, and to require supervision, control and care for his own or the public welfare. The term "inebriate" as used in this act means any person incapable of managing himself or his affairs by reasons of the habitual and excessive use of intoxi-

[1] **Note by Attorney General.** This was Mason's Minnesota Statutes of 1927, Section 8953, in the old probate code, Chapter 74, repealed by the new Minnesota Probate Code, Laws 1935, c. 72. Hence it was impossible to comply literally with this recommendation of the commission. As an alternative the legislature in the psychopathic personality act, Laws 1939, Chapter 369, adopted by reference the laws relating to insanity cases.

cating liquor, drugs, or other narcotics. *The term "psychopathic personality"* as used in this act means *any person who, because of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to evalulate the consequences of his acts, or combinations of these conditions, is socially or morally irresponsible, sexually or otherwise, and who as a result of such conduct becomes a menace to the public good and requires supervision.* The term "insane" as used in this act means any person of unsound mind other than one who may be properly described as only an inebriate, a feeble-minded person or *an individual with a psychopathic personality.*

For the purpose of this act, political or religious belief or activity, or racial origins, or behavior occurring as part of industrial disputes or strikes shall in no case be considered as a basis for a diagnosis of psychopathic personality.

(b) Change the Probate Court Code to incorporate the term "psychopathic personality" in describing conditions and circumstances of procedure. This will involve appropriate change in language in:

Laws of 1935, Chapter 72, Sections 174, 176, 178, 179, and 180.

Laws of 1937, Chapter 435, Section 23.

The Committee has been unable to do the necessary legal research to determine whether other sections need similar change and therefore suggests that the question be referred to the office of the Attorney General.

(c) Change act relating to examination and commitment procedures—Session Laws 1927, Chapter 136, S. F. No. 312—as follows (new material underlined)

An act to amend Sections 8959,[2] General Statutes of Minnesota, 1923 *and 1927* providing for the commitment and release of defectives who shall be found to be dangerous to the public.

Section 1. Examination and report—That Section 8959, General Statutes of Minnesota, 1923 and amendments of 1927, be and the same is hereby amended so as to read as follows:

Section 8959. The board of examiners shall hear all proper testimony offered by any person interested

[2] **Note by Attorney General.** Section 8959 was repealed by the new Probate Code of 1935, and superseded by Section 175 thereof (Mason's 1938 Minnesota Supplement, Section 8992-175). See Note (1), **supra,** and Appellee's Main Brief p. 55.

and the court may cause witnesses to be subpoenaed. When the examination is completed, the board shall determine whether or not the person examined is a feeble-minded person, an inebriate, an insane person, *or an individual who has a psychopathic personality* and shall file in the court a report of their proceedings, including the findings, upon such forms as the state board of control may authorize and adopt. Whenever any defective *who is a feeble-minded person, an inebriate, an insane person, or a person with a psychopathic personality* shall be found to be dangerous to the public by the board of examiners, he shall be committed by the probate court to the asylum for the dangerous insane, *or to the asylum for the dangerous defective,* for safe-keeping and treatment, and no person when so committed, shall be liberated therefrom unless and until a new board of examiners, which shall have been appointed in the same manner and with the same powers, duties, and qualifications, as the board which committed him *or her,* shall after examination and after due notice to the county attorney, find that such person, if at liberty, would no longer be dangerous to the public, *provided also that in the discretion of the court, upon recommendation of the board of examiners such person may be released under supervision.* Such examination shall be held in the county where the original commitment was issued and for the purpose of such hearing, the person to be re-examined shall be brought to said county by order of the probate court directed to the superintendent of the hospital where the person to be re-examined is held.

Section 2. Inconsistent acts repealed—All acts and part of acts inconsistent and in conflict with the provisions of this act, hereby are repealed.

Section 3. This act shall take effect and be enforced from and after its passage.

In attempting to give the exact language of the changes in law thought to be desirable, the Committee has hoped primarily to facilitate legislative procedure. It is suggested that this be carefully checked and analyzed by the legal experts of the Office of the Attorney General.

This recommendation will have the effect of extending the powers of police and prosecuting officials through the probate court to persons known to be dangerously psychopathic or defective without waiting for definite, and sometimes horrible, criminal acts to be committed. A serious limitation in present

procedure is the inability of officials to deal with such persons before they commit criminal acts. The proposed changes will remedy this situation. Though the grant of powers proposed is considerable, the Committee feels that the special conditions of the definition suggested will give adequate protection to the citizen against persecution through arbitrary acts of incompetent or unfriendly officials.

Modification of the law as suggested is highly desirable as a matter of immediate legislative action. No appropriation for additional facilities is suggested at this time. In the development of a long-time program, it is probable that additional facilities and new types of institutional treatment will need to be provided. That, however, is a matter which the Committee does not feel competent to discuss at the present time.

SECOND RECOMMENDATION.

Appointment of an Interim Committee of the Legislature to:

(a) Arrange for, supervise, or direct a more comprehensive study of the legal, medical, and administrative aspects of the whole problem of defective, psychopathic, and insane persons, both criminal and non-criminal. It is suggested that the cooperation of committees of the state and national Bar Associations, the national, state, and county Medical Associations, the National Committee on Mental Hygiene, and other interested groups be utilized in developing special phases of the problem.

(b) Report to the next Legislature the course of action necessary to improve and extend the state's efforts into a general unified program for the care of defectives, psychopathic and insane, both criminal and non-criminal. It is suggested that this will involve:

(1) Separation, classification and codification of laws and amendments now in effect together with suggested changes in law.

(2) Review of existing institutional facilities with attention to the possible needs for more specialized forms of treatment. This may involve the preparation of cost data on a new type of institution for the care of the dangerously defective and psychopathic.

(3) Consideration of the desirability of modification of present laws relating to sterilization to permit greater experimentation with this operation as a form of treatment in the case of certain types of defective, abnormal or psychopathic persons.

(4) Consideration of the whole question of how best to provide adequate psychiatric service to the courts.

These two recommendations are submitted as suggestions for the best procedure to be followed in dealing with the problem of the insane criminal and the sex criminal. The immediate needs of law enforcement officers are cared for in the first recommendation. In view of the many aspects involved in a long-time view of the problem, it is suggested that an interim committee of the Legislature is the best auspices under which to survey the facts and shape up a program for future action.

Attached to this report is a brief summary statement of medical opinion relating to the basic problems of sexual abnormality or sex perversions prepared by Dr. J. C. McKinley. Professor of Neuro-psychiatry and Head of the Department of Medicine, University of Minnesota.

There is also attached a short bibliography of recent technical journal articles bearing on pertinent aspects of the problem of the insane and sex criminals.

LETTER BY DR. J. C. McKINLEY, HEAD OF DEPARTMENT OF MEDICINE AND PROFESSOR OF NEURO-PSYCHIATRY, UNIVERSITY OF MINNESOTA MEDICAL SCHOOL, APPENDED TO COMMITTEE REPORT.

UNIVERSITY OF MINNESOTA
The Medical School
Minneapolis

Department of Medicine, March 20, 1939
Professor George B. Vold, Chairman
The Governor's Committee on Sexual Criminality
Subject: Medical and Psychological Considerations of Sex Perversion

Dear Professor Vold:

In response to your request that I prepare a statement on sex perversion to accompany the Committee's report to the Governor, I am submitting the following comments. The time for preparation has been so short that my words make no pretense of being scholarly or complete, and the Committee has had no opportunity to edit the statement. Hence, aside from a conference with my own staff in the Division of Nervous and Mental Diseases at the University, these are largely my own random thoughts which are necessarily tentative and subject to revision and expansion on more leisurely consideration and more searching study.

A compilation of scientific opinion on this topic would doubtless reveal wide differences of viewpoint as to the underlying factors of causative importance. Such speculations will not be indulged in at this point; the attempt is rather made to indicate some of the major facts that seem fairly well established and acceptable to most of the students whose work has overlapped into this field.

The well-equilibrated, intelligent individual is likely to think of normal sex behavior as the combination of aesthetically acceptable, purposeful attitudes and actions that a man or woman pursues through courtship and into marriage for purposes of procreation; anything not directly concerned with this is likely to be thought of by some people as "perverted." Considerable latitude is allowed, however, so that dancing, a certain amount of physical contact in play, and conversation with sexual reference are all generally permissible. Society frowns upon, but seems rather tolerant of normal but illicit relationships on the part of the young male but holds tenaciously to the standard of celibacy for the young female.

Certainly many and probably the majority of nonmedical persons consider masturbation in the adolescent boy as evidence of degeneracy and apply an even greater measure of discredit towards its practice by the young woman. Yet, numerous surveys have demonstrated that the practice is indulged in by a great majority of young males and very likely by a majority of the young females, so that most students accept such behavior as no more than a normal transitory phase of the development sexually of the individual personality. One can scarcely be dogmatic about the significance of the continuation of active auto-eroticism into later years though it is agreed that onanism becomes a matter of less and less moment among most adults as they become adjusted to a normal heterosexual life. It seems likely that some normal individuals (males especially) who have little or no opportunity for heterosexual relationships deliberately relieve their tensions in this fashion, or if thrown in with others of the same sex, resort as a matter of expediency to homosexual practices. On the other hand, onanism may at times be a part of outspoken perversions such as fetishism, exhibitionism or sadism. For the most part, however, society need have little interest in masturbation in relation to the public welfare but may safely leave the topic to the therapies of the mental hygienist and psychiatrist along with the commonly associated psychasthenic reactions and emotional infantilism of some of these individuals.

Fetishism (the substitution of an inanimate object for the sex partner) may be as harmlessly represented as a lock of hair or a handkerchief; it may be as perverse as to provide a means

of satisfaction through play with urine (urophilia) or feces (coprophilia); or it may be associated with such vicious criminality as removal of parts of the body (often genitalia) from the victim murdered for the purpose. Some psychopaths have been reported with the drive to perform the sexual act on the dead bodies of women (necrophilia); occasional cases are in the literature in which cannibalism (necrophagia) has been subsequently practiced on parts of the victim. These are all doubtless associated with fetishism.

Transvestitism is the drive to wear clothing of the opposite sex. In itself, aside from the social complications that may arise (use of toilet facilities, for example), there would be no great reason for society to interest itself in these cases if it were not for the fact that sexually aggressive individuals might use this method of striking up acquaintances with other people and teaching or misusing them in the direction of major perversion. The psychological explanation of this type of behavior in non-aggressive individuals is not altogether clear but they are probably to be classed usually as definite homosexuals.

Homosexuality refers to the attraction found in a rather small but very appreciable percentage of the population to individuals of the same sex. In the more pronounced cases there is actual aversion to any thoughts of sexual play or satisfaction with members of the opposite sex. In benign form this exists at puberty in the tendency of boys to find their enjoyment with other boys, girls with girls and in a little more outspoken, but still perfectly normal fashion in the "crushes" that some girls have on other girls during this same period. Rather complicated theorizing has been done in psychoanalytical circles regarding this stage of normal, so-called "homosexuality" of adolescence. Since the term carries with it a certain sense of disgust or antipathy in the minds of most people, it is more commonly and probably better referred to as a boy's shyness with girls and vice versa.

Sometimes this tendency to associate with members of the same sex develops into experiments leading to sexual satisfaction through the medium of a partner of the same sex. Development of some of these individuals may then be arrested at this level with persistence and elaboration of the homosexuality and suppression of the growth towards normal heterosexuality. This result should not be thought of as due entirely to the sex experiences at puberty; good evidence shows that many such persons have been endowed at birth with personality characteristics which in large part have determined their fixation at the homosexual level as adults. Large numbers of boys and girls at puberty have opportunities for homosexual experience, yet only a small percentage of them show later

any pronounced tendency in this direction. Of course, repetition of homosexual experiences in predisposed individuals is an aid to the excursion into further homosexuality.

Many homosexuals are otherwise quite acceptable persons. Prominent characters in history who have contributed to art, music, literature and other branches of cultural progress have fallen into this group. Society's interest in these people, however, as a potential menace to social welfare is often correct in that their aggressions against the young of the race with seduction into these practices is an obvious possibility, and an actuality as a study of court records would show. It is to a very considerable degree the group of poorly inhibited homosexuals who are responsible for the continuation in society of undesirable perversions such as fellatio, cunnilingus, and mutual masturbation, to mention a few.

Pedophilia, or the seeking out of pubertal or prepubertal children as the sex partner is most commonly observed in aged men, though younger individuals may at times be apprehended in this practice. Many of these persons are suffering sexual impotence and avoid sexual relations with mature women because of their personal insecurity; their ability to feel superior with children circumvents their sense of insecurity.

Exhibitionism in the narrower sense, which is applicable to the present comment, is the deriving of sexual satisfaction nearly always in the male through the exposure of the erect genitalia to young females. The psychic trauma to the girl may precipitate rather marked psychoneurotic reactions in her. The underlying psychological mechanisms at play in the exhibitionist has been the subject of much speculation by psychologists and psychiatrists and is still a somewhat obscure topic.

Masochism is the tendency to obtain sexual satisfaction through the experiencing of pain. Sadism is the experiencing of sexual satisfaction through the infliction of pain on others. Together, these conditions are sometimes called algolagnia; the former, passive algolagnia and the latter, active algolagnia. Sadism in particular is responsible for many acts of criminal violence, often of the most revolting type. Both masochistic and sadistic trends may be found running through and a part of the various perversions considered in the foregoing. Indeed, mixtures of perverse activities and trends are very likely to occur so that one should not think of the several perversions as necessarily isolated. Even normal heterosexual drive may be associated with perversion; thus rape is probably a combination of normal or at most excessive sexual drive together with sadistic tendencies and lack of proper inhibition.

The constitutional factor was mentioned in connection with homosexuality. Attention is again directed to this point. Most

observers believe that sexually perverted individuals are constitutionally psychopathic. The psychopathic personality traits of these persons are often clearly in evidence through the presence of excessive emotional overreactivity, lack of appreciation or ignoring of the consequences to themselves or to others of their acts, failure to exercise good judgment in other matters. This is not the case with every perverted individual but is sufficiently in evidence in most cases to impress upon the physician, lawyer, legislator or other expert that the problem of sex perversion and sexual criminality is best approached through a consideration of the problem of psychopathic personality in general. That a detailed and extensive codification of this extremely complex subject could be made with sufficient accuracy or inclusiveness to predict all of its ramifications regarding the public safety seems unlikely. Probably the best that can be done at present is to handle the individual case on the advice and cooperation of enlightened experts under the usual safeguards of judicial practice, with provision for prolonged removal of these persons from society when found to be dangerous. Certainly the answer to the problem cannot be found in handling these offenders merely as minor criminals. Short periods of confinement for punishment accomplishes nothing as some of these individuals are convicted over and over again.

Factual data in this field are too fragmentary and subjective. Promising aids to understanding are now developing through such technics as those described by Terman and his collaborators in his book on *Sex and Personality*. Much study is necessary before such approaches can be properly evaluated.

Sincerely yours,

/s/ J. C. McKINLEY, M. D.
Professor of Neuropsychiatry.

JCM-S

LETTER ACCOMPANYING COMMITTEE REPORT BY DR. GEORGE B. VOLD, PROFESSOR OF SOCIOLOGY, UNIVERSITY OF MINNESOTA, CHAIRMAN OF COMMITTEE.

UNIVERSITY OF MINNESOTA
College of Science, Literature, and the Arts
Minneapolis

Department of Sociology
and
Graduate Course in Social Work

March 23, 1939

The Honorable Harold E. Stassen
Governor of the State of Minnesota
State Capitol
Saint Paul, Minnesota

Dear Governor Stassen:

In connection with the attached Committee report, but not as a part of it, I take this opportunity to pass along to you my personal opinion and comment on several phases of the general problem under discussion.

I am sure you will be glad to know that every member of the Committee gave his hearty support and cooperation to the preparation of this report. May I suggest that an appropriate letter from you to the individual members of the Committee would be a gracious courtesy appreciated by them.

With reference to the recommendations of the report itself, it seems to me that they go about as far as is probably desirable at this time. The first recommendation aims to correct a genuine disadvantage in the present machinery for the care of defectives. It will make possible hospital care, either public or private, of some of the known sex perverts who are now a continual menace on the streets, though their specific acts may thus far only be indicative of a generally perverted condition with potentially dangerous further development. The incipient sadist who enjoys cruelty to and the suffering of others, as well as certain types of exhibitionists who get their sex satisfaction from the horror reactions of their victims are especially dangerous from the standpoint of possible further development of their disorders. Later stages in both types of cases are likely to produce violent attacks and serious criminal acts—motivated in either case by the perverse satisfaction in the suffering and horror of the victim.

It seems inevitable that sooner or later the state will have to provide an institution for defective delinquents. From the standpoint of gaining genuine support for such a project, how-

ever, it would seem wise policy to move slowly. If we can gain the legal weapon with which to deal more competently with this class of offenders at this time, the problem of providing increased institutional facilities can well come later. The whole question of administrative reorganization in the control of institutions is involved in the problem of what kind and how extensive new facilities need to be. Definite institutional needs can best be decided after some of the more fundamental problems of reorganization have been settled.

It is with this practical problem in mind that the Committee has asked as its second recommendation that an Interim Committee of the Legislature be appointed to assume responsibility for the preparation of a more specific program of action by the next session of the Legislature. The problems are all practical ones involving the compromise of conflicting interests and views. There will probably be general agreement that ideally we need more institutional facilities and an enlarged and better trained (and better paid) personnel in caring for the insane and other classes of defectives. Yet such need is necessarily relative to other demands on state funds and resources. The problems are not ones of abstract principle or of absolute fact, but of practical compromises—how much can the state afford to pay for such service? And can it afford not to pay? An Interim Committee with fair representation of all pertinent points of view seems the more desirable device through which to approach a program having possibilities of realization.

These compromise aspects are peculiarly evident in questions relating to the care and supervision of the insane. Present arrangements lack unity and centralization of administration. We have in effect as many "systems" for the care of the insane as there are state hospitals, with standards and procedures reflecting to a considerable extent the personal effectiveness of the superintendent in charge. A more unified system with much closer control over the release from such institutions would be possible if a Department of Mental Diseases were created, headed by a well-trained, outstanding person of demonstrated capacity for such a task, with the individual institutions subordinated to the requirements of the system as a whole. But again the principle questions are all relative and dependent upon political expediency and compromise. To create such a unified, coordinated system and then staff it with poorly trained or incompetent personnel, or cut appropriations so that only such types of personnel would be interested, and the end result would be far worse than present arrangements.

It is evident, of course, that were such a unified Department of Mental Diseases set up it could readily be expanded to serve the needs of the courts for psychiatric service in connection

with criminal cases and the insanity defense as now used. Instead of the present system of specialists in private practice acting on a fee basis in special cases only, there would be available, a professional staff of trained persons, expert in the various fields of mental disease, and giving their services to the state on a career basis rather than on the basis of *per diem* fees. These theoretical considerations do not answer, however, the practical question of how far in this direction it is desirable or advisable to go at the present time. That answer in part at least, depends on the general scheme of administrative reorganization that can be worked out.

I have written thus frankly as a matter of personal opinion and not as a member of the committee submitting the report, with the thought that this letter be treated as a private communication not to be released for publication.

With continued best wishes for the success of your program and with kindest personal regards, I am

Sincerely yours,

(sgd.) GEORGE B. VOLD

GEORGE B. VOLD

GBV:er Professor of Sociology.

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SUPREME COURT OF THE UNITED STATES.

No. 394.—October Term, 1939.

State of Minnesota *ex rel.* Charles Edwin Pearson, Appellant,
vs.
Probate Court of Ramsey County, Minnesota, and Hon. Michael F. Kinkead, Judge of said Court of Ramsey County.

Appeal from the Supreme Court of the State of Minnesota.

[February 26, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, Charles Edwin Pearson, petitioned the Supreme Court of Minnesota for a writ of prohibition commanding the Probate Court of Ramsey County, and its Judge, to desist from proceeding against him as a "psychopathic personality" under Chapter 369 of the Laws of Minnesota of 1939. A proceeding under the statute had been brought in the Probate Court for the commitment of appellant and an order for his production and examination had been issued.

Appellant contended that the statute violated the due process and equal protection clauses of the Fourteenth Amendment of the Federal Constitution. After hearing upon an alternative writ, the Supreme Court overruled these contentions and quashed the writ. 205 Minn. 545. The case comes here on appeal. Jud. Code, Sec. 237(a); 28 U. S. C. 344(a).

The statute, in Section 1, defines the term "psychopathic personality" as meaning

"the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons".

Section 2 provides that, except as otherwise therein or thereafter provided, the laws relating to insane persons, or those alleged to be

insane, shall apply with like force to persons having, or alleged to have, a psychopathic personality. There is a proviso that before proceedings are instituted the facts shall first be submitted to the county attorney who if he is satisfied that good cause exists shall prepare a petition to be executed by a person having knowledge of the facts and shall file it with the judge of the probate court of the county in which the "patient" has his "settlement or is present". The probate judge shall set the matter down for hearing and for examination of the "patient". The judge may exclude the general public from attendance. The "patient" may be represented by counsel and the court may appoint counsel for him if he is financially unable to obtain such assistance. The "patient" is entitled to compulsory process for the attendance of witnesses in his behalf. The court must appoint two duly licensed doctors of medicine to assist in the examination. The proceedings are to be reduced to writing and made parts of the court's records. From a finding of the existence of psychopathic personality, the "patient" may appeal to the district court.

After setting forth the general principles which governed its determination, the state court construed the statute in these words:

"Applying these principles to the case before us, it can reasonably be said that the language of Section 1 of the act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and, perhaps, unconstitutional in its application, but would also be an unwarranted departure from the accepted meaning of the words defined".

This construction is binding upon us. Any contention that the construction is contrary to the terms of the Act is unavailing here. For the purpose of deciding the constitutional questions appellant raises we must take the statute as though it read precisely as the highest court of the State has interpreted it. *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32; *Guaranty Trust Company* v. *Blodgett*, 287 U. S. 509, 513; *Hicklin* v. *Coney*, 290 U. S. 169, 172; *Georgia Railway & Electric Co.* v. *Decatur*, 295 U. S. 165, 170. Moreover, as it

was the manifest purpose of the court to determine definitely the meaning of the Act, we accept the view presented by the Attorney General of the State at this bar, that the court used the word "include" as defining the entire class of persons to whom the statute applies and not as describing merely a portion of a larger class. In advance of a decision by the state court applying the statute to persons outside that definition, we should not adopt a construction of the provision which might render it of doubtful validity. *Stephenson* v. *Binford*, 287 U. S. 251, 277.

This construction of the statute destroys the contention that it is too vague and indefinite to constitute valid legislation. There must be proof of a "habitual course of misconduct in sexual matters" on the part of the persons against whom a proceeding under the statute is directed, which has shown "an utter lack of power to control their sexual impulses", and hence that they "are likely to attack or otherwise inflict injury, loss, pain or other evil on the objects of their uncontrolled and uncontrollable desire". These underlying conditions, calling for evidence of past conduct pointing to probable consequences, are as susceptible of proof as many of the criteria constantly applied in prosecutions for crime. *Nash* v. *United States*, 229 U. S. 373, 377; *Fox* v. *Washington*, 236 U. S. 273, 277, 278; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348; *Miller* v. *Wurzbach*, 280 U. S. 396, 399. Appellant's criticisms are drawn from his interpretation of the statute and find no warrant in the statute as the state court has construed it.

Equally unavailing is the contention that the statute denies appellant the equal protection of the laws. The argument proceeds on the view that the statute has selected a group which is a part of a larger class. The question, however, is whether the legislature could constitutionally make a class of the group it did select. That is, whether there is any rational basis for such a selection. We see no reason for doubt upon this point. Whether the legislature could have gone farther is not the question. The class it did select is identified by the state court in terms which clearly show that the persons within that class constitute a dangerous element in the community which the legislature in its discretion could put under appropriate control. As we have often said, the legislature is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. If

the law "presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied". *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 69, 78; *Miller* v. *Wilson*, 236 U. S. 373, 384; *Semler* v. *Dental Examiners*, 294 U. S. 608, 610, 611; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400.

There remains the question whether, apart from definition and classification, the procedure authorized by the statute adequately safeguards the fundamental rights embraced in the conception of due process. In this relation it is important to note that appellant has challenged the proceeding *in limine* by seeking to prevent the probate judge from entertaining it. To support such a challenge, the statute in its procedural aspect must be found to be invalid on its face and not by reason of some particular application inconsistent with due process. In that light the argument on this branch of the case also fails.

As we have seen, the facts must first be submitted to the county attorney who must be satisfied that good cause exists. He then draws a petition which must be "executed by a person having knowledge of the facts". The probate judge must set the matter for hearing and for examination of the person proceeded against. Provision is made for his representation by counsel and for compelling the production of witnesses in his behalf. The court must appoint two licensed doctors of medicine to assist in the examination. The argument that these doctors may not be sufficiently expert in this type of cases merely invites conjecture. There is no reason to doubt that qualified medical men are usually available. Laws as to proceedings where persons are alleged to be insane are made applicable. Appellant says that the patient cannot be released on bail. The State contests this, insisting that he may be so released pending hearing or on appeal, pointing to Mason's Minnesota Statutes, 1938 Supplement, Section 8992-178. Appellant contends that if the court finds the patient to be within the statute, he must be committed "for the rest of his life to an asylum for the dangerously insane". Mason's Minn. Stat., 1938 Supp., Sec. 8992-176. The State also contests this conclusion, maintaining that the commitment is without term and subject to the right of the patient, or any one interested in him, to petition the committing court for release at any time. Mason's Minn. Stat., 1938 Supp., Sec. 8992-143; Laws of 1935, Chap. 72, Sec. 143; as amended by Laws of

1939, Chap. 270, Sec. 8. The statute gives a right of appeal from the finding of the probate judge upon compliance with certain specified provisions of the Minnesota laws. Appellant contends that this excludes other provisions of laws relating to appeals in insanity cases. Again, appellant's position is contested by the State upon the ground that there is no express limitation or exclusion in the language of the statute and that other provisions governing appellate procedure apply. These various procedural questions, and others suggested by appellant, do not appear to have been passed upon by the state court.

We fully recognize the danger of a deprivation of due process in proceedings dealing with persons charged with insanity or, as here, with a psychopathic personality as defined in the statute, and the special importance of maintaining the basic interests of liberty in a class of cases where the law though "fair on its face and impartial in appearance" may be open to serious abuses in administration and courts may be imposed upon if the substantial rights of the persons charged are not adequately safeguarded at every stage of the proceedings. But we have no occasion to consider such abuses here, for none have occurred. The applicable statutes are not patently defective in any vital respect and we should not assume, in advance of a decision by the state court, that they should be construed so as to deprive appellant of the due process to which he is entitled under the Federal Constitution. *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 546; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 186, 187; *Stephenson* v. *Binford*, *supra*. On the contrary, we must assume that the Minnesota courts will protect appellant in every constitutional right he possesses. His procedural objections are premature.

The judgment is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.